

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2015/0612

BETWEEN:

PAULINA JOSEPH

Claimant

and

MORRISON HUGHES

Defendant

APPEARANCES:

Ms. Diana Thomas Hunte for the Claimant

Ms. Shirley Lewis for the Defendant

2021: November 25;
2024: February 21;
March 5, 6; (Written submissions)
October 24.

JUDGMENT

Procedural History

- [1] **CENAC-PHULGENCE J.:** This is a claim which has been plagued with one unfortunate event after the other.
- [2] This claim was initially filed on 6th August 2015 by Paulina Joseph. The matter took its usual course through case management and was referred to mediation in March 2016. Mediation having failed, case management directions were given in April 2016. Evidence for the claimant was filed by way of witness summary for Paulina Joseph, and witness statements of Christine Joseph and Elizabeth Joseph in July 2016. For the defendant, evidence was filed from Morrison

Hughes, Francis Felicien and Macarious Brown in July 2016. The trial date was set for 6th April 2017 but had to be vacated as by that date it appeared that the claimant Paulina Joseph was declining mentally. On 26th March 2019, the Court appointed Elizabeth Joseph as next friend to the claimant, Paulina Joseph. As fate would have it, the claimant, Paulina Joseph passed away in May 2020, and on 18th June 2020, the Court appointed Elizabeth Joseph, daughter of the deceased as representative of the estate of Paulina Joseph, deceased.

- [3] Several trial dates were vacated in the matter for one reason or another and the trial finally commenced on 25th November 2021 but had to be aborted due to illness of one of the claimant's witnesses. Thereafter, Counsel for the defendant took ill and the matter had to be adjourned. Given the way the matter had progressed and the fact that some of the witnesses had passed away or were not available, the matter was again referred to mediation in 2020 and was referred to Judicial Settlement Conference in June 2023 with the agreement of the parties but was unsuccessful. Not meaning any disrespect to the claimant, for the purposes of distinguishing between parties, I will refer to Paulina and Elizabeth Joseph by their first names.

The Claim

- [4] The claimant in this matter seeks a declaration that the parcel of land registered in the Registry of Lands as Block and Parcel No. 1453B 137 ("the Monchy Property") belonging to the defendant ("Mr. Hughes") is held by him on trust for her or alternatively that such portion of the parcel of land and building erected thereon equivalent to Paulina's contribution to the acquisition of the parcel are held on trust for her by Mr. Hughes. This dispute largely stems from the decision of the Government of Saint Lucia to undertake a project to relocate the residents of Barnard Hill who were occupying Block and Parcel No. 0848D 781 without legal title ("The Conway Relocation Project"). The Government would assess the chattel houses occupied by the residents of Barnard Hill and offer them the value of the assessed home as a reduction in the amount paid for the acquisition of a property in Monchy, Gros Islet where the residents were relocated to.

Claimant's case

- [5] It is the case for the claimant that in or about 1982, Paulina constructed a wooden house at Barnard Hill on Block and Parcel No.0848D 781 for her use and occupation. Paulina, who at the time was a resident of the British Virgin Islands sent money to her brother Stephen to build the house, and soon after its construction allowed her mother to reside at the premises as a licensee until her death in 2007.
- [6] In 2004, Mr. Hughes who is Paulina's brother became homeless and requested permission from her to reside at her house in Barnard Hill. Paulina acceded to this request on the basis that Mr. Hughes would be a companion to their mother and allowed him to reside at Barnard Hill as a licensee.
- [7] When Mr. Hughes became aware of the Conway Relocation Project he notified Paulina that he would be acting on her behalf and undertook the demolition of her house and the arrangements for registration of Paulina as owner of the house and land package in Monchy. Mr. Hughes later informed Paulina that she was assigned Block and Parcel No. 1453B 137 in Monchy and that the value of the demolished house was \$23,500.00, which was sufficient to cover the purchase of the land, but that Paulina would have to pay for the house by monthly payments to the Housing Authority over time. Paulina then informed Mr. Hughes that her daughter Elizabeth Joseph was to be the owner of the Monchy Property.
- [8] Mr. Hughes thereafter continued to represent to Paulina that he was doing all that was necessary and was acting as her agent to register her daughter as the owner of the Monchy Property and would inform her of the cost of the house at Monchy when the figure became available.
- [9] Mr. Hughes subsequently informed Ms. Joseph that he would require funds to partition the house at Monchy, and in 2012 and 2013 on the representations of Mr. Hughes, Ms. Joseph advanced the sum of USD \$1,200.00 for the partitions to be constructed.

- [10] In 2014, Paulina informed Mr. Hughes that she would be visiting Saint Lucia and was informed by Mr. Hughes that she had no house at Monchy. On her arrival at the Monchy Property, she was denied entry into the house by Mr. Hughes.
- [11] As indicated above, Paulina passed away before the trial of this matter and at the trial only one witness was called for the claimant, namely her daughter Elizabeth. Paulina having only provided a witness summary by the date of trial could not have this summary tendered as evidence in chief as she has passed by then.
- [12] In cross examination, Elizabeth stated that her mother, Paulina would send money to her brother Stephen bi-weekly or monthly to build the house at Barnard Hill. That the money was sent via Barclays Bank but despite her efforts she could not locate the records of the payments by her mother. She was also unable to present any written evidence of the agreement between her mother and Mr. Hughes, nor was she able to provide a receipt for the payments she claims her mother made to Mr. Hughes.
- [13] Elizabeth insists that the house at Barnard Hill which was valued by the Government was built by her mother, but she had not witnessed the construction of the house as she lived in the Virgin Islands during that time. She also insisted that the house from construction in 1982 to the date of its assessment by the Government would not have needed repairs. She was also adamant that whether the house was rotten or whether it was deplorable it did not belong to Mr. Hughes.
- [14] According to Elizabeth she did not read the statement of Macarious Brown, one of the carpenters engaged by Mr. Hughes because the carpenters were not there. But under cross examination, she stated that she herself was not there at the time of construction of any of the houses referred to in this matter. She also agreed under cross examination that her mother and herself were not residing at the house in Barnard Hill and were not occupying the house at the time of the Conway Relocation Project.

Defendant's case

- [15] Conversely, it is the case for the defendant that he never stayed at the premises of Paulina as a licensee, but that the house at Barnard Hill belonged to his mother. Mr. Hughes' evidence is that he lived with his mother from an early age, and later when she fell ill, he took care of her till her death in 2007; that his mother's house was so old and rotten that one could see through it from the outside and that he and his brother Stephen lived in the house with their mother. When his brother, Stephen took ill with cancer and his mother deteriorated, his girlfriend Jeanette Lubin (Ms. Lubin) moved in and cared for his mother and brother for some time.
- [16] Mr. Hughes says in 2002 he grew ashamed of the condition of the house and set about rebuilding and replacing it bit by bit over time without the help of Paulina or anyone else. His evidence is that the house he rebuilt was then valued by the Government of Saint Lucia for \$23,500.00. Paulina was never assigned a house package as she did not reside in Saint Lucia, nor was there any agreement or conversation between himself and Paulina about the house and he acted solely on his own behalf and was never an agent or licensee of Paulina.
- [17] Mr. Hughes was asked by the National Housing Corporation to name a beneficiary in the event of his death and of his own volition chose to name his niece Elizabeth as the beneficiary of the Monchy Property which he thereafter withdrew.
- [18] Mr. Hughes says he did not promise to notify Paulina of the purchase price of the house nor was there a request for USD\$1,200.00 for the installation of partitions in the house and Paulina did not send him the sum of USD\$1,200.00.
- [19] In support of his defence, Mr. Hughes has presented (i) an agreement between himself and the Government of Saint Lucia for the transfer of lot 137 at Monchy to himself; (ii) correspondence dated 31st December 2007 from the Ministry of Physical Development, Housing Urban Renewal and Local Government ("the

Ministry”) advising that he was required to commence payments towards the purchase of the lot which had been allocated to him and (iii) further correspondence from the Ministry dated the 25th of September 2011 which highlighted a total cost of the Monchy Property in the sum of \$103,767.61 with the sum of \$23,500.00 representing the equity from the assessed value of the house at Conway being deducted from the total cost. After this deduction Mr. Hughes had a balance of \$80,267.61 of which \$3,900.00 had been paid by the 25th of September 2011. None of these documents mention Paulina or any agreement between herself and Mr. Hughes.

[20] Under cross examination Mr Hughes maintained that he rebuilt his mother’s home at Barnard Hill, Castries. According to him, the house was not good, he broke it down and rebuilt it. He stated that he and his brother Stephen grew up together in that house, that there were nine children of his mother in total five brothers and four sisters and that he lived in that house until he moved to Monchy. He was clear that he never treated the house as Paulina’s house because he knew it was his mother’s.

[21] He indicated that he made the decision to name his niece Elizabeth as a beneficiary of the Monchy Property in the event of his death on his own as his first son had died and he had nobody to put there. According to Mr. Hughes the Government had given him a shell at Monchy but he never agreed with Paulina and Elizabeth that they pay to put tiles and partitions. On re-examination Mr Hughes reaffirmed that the house he rebuilt was the same house that the carpenters had worked on.

[22] Ms. Jeannette Lubin (Ms. Lubin”) affirmed that she resided with Mr. Hughes and his mother at the house at Barnard Hill and she took care of his mother until her death in 2007. Under cross examination Ms. Lubin informed that during their time together she never heard Mr. Hughes say that the house belonged to Paulina.

[23] The third witness for the defence was the carpenter Macarious Brown (“Mr. Brown”) who gave evidence of the condition of the house at Barnard Hill before

its renovation. In his witness statement Mr. Brown states that he and his brother Francis Felicien rebuilt the house at Barnard Hill for Mr. Hughes. His evidence is that at the time, the siding, flooring and roof were bad and the boards on the sides were so rotten you could see into the house from outside. Mr. Brown says that all the wood from the house was thrown out except approximately \$2,000.00 in salvaged wood and galvanize which was reused.

- [24] Under cross examination, Mr. Brown stated that he had known Mr. Hughes for a long time. He confirmed that he had fixed the house for Mr. Hughes and that at the time he was fixing the house, Mr. Hughes, his mother and twin brother lived in the house. He says he changed the flooring, the uprights and all the plywood because the house was rotten. His evidence was that the house was 16 by 25 feet and had two bedrooms, a living room, kitchen, a front balcony and an outside bathroom and that they rebuilt the whole house from the foundation up.

Issue

- [25] The issue which arises in this case is whether there was a constructive trust between Paulina and Mr. Hughes, such that Paulina was the owner of the Monchy Property or held a share in the Monchy Property equivalent to her contributions toward the acquisition and improvement of the house erected on the Property.

Law and Analysis

- [26] As a starting point for the determination of the issue in this matter, I am constrained to cite the trite legal principle that he or she who alleges must prove their case. The **Civil Code of Saint Lucia**¹ at articles 1133 and 1134 make this clear:

“1133. The party who claims the fulfilment of an obligation must prove it. On the other hand he or she who alleges facts in avoidance or extinction of an obligation must prove them; subject nevertheless to the special rules of this Chapter.

¹ Cap 4.01, Revised Laws of Saint Lucia.

1134. The evidence produced must be the best of which the case in its nature is susceptible. This is called primary evidence. Secondary evidence is inadmissible unless it is shown that the primary cannot be produced.”

The standard of proof in this instance is on a balance of probabilities or what is more likely than not.

- [27] Constructive trust as legal principle is founded in the Civil Code which provides that ‘Implied, constructive and resulting trusts shall arise under the law of Saint Lucia in the same circumstances as they arise under the law of England.’
- [28] Consequently, the legal foundation for the law of constructive trusts in England and by extension Saint Lucia can be found in the case of **Gissing v Gissing**.² In that case, the 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 requirements 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.
- [29] However, these elements must nonetheless be proven by the claimant and the Court must be satisfied that the standard of proof has been met.
- [30] This matter largely falls on the evidence or rather the absence of evidence on behalf of the claimant in support of her case. It is unfortunate that Paulina had not survived to give evidence at the trial of this matter but beyond that, the absence of any witnesses outside of her daughter Elizabeth has severely

² [1971] AC 881.

hampered the claimant's ability to establish a case of constructive trust in her favour.

[31] As mentioned previously in this decision the sole witness for the claimant, that is, Elizabeth was not present in Saint Lucia for most of the time over which the facts of this case transpired. She was resident in the Virgin Islands and would visit with her mother on holiday and relied heavily on what she may have been told by her mother. She was not present to see any works being performed by either her uncle Stephen as she alleges or Mr. Hughes and his carpenters. She was unable to provide proof of the agreement between her mother, Paulina and Mr. Hughes for the title to the Monchy Property. She was unable to provide evidence of the financial contributions made by her mother to Mr. Hughes save for the USD\$1,200.00 or that the house at Barnard Hill which was assessed was the same house built by her mother. In fact, she could provide nothing to show that the house at Barnard Hill even belonged to her mother. A lot of Elizabeth's evidence relates to things which she has no first-hand knowledge of and that makes her evidence somewhat unreliable.

[32] On the contrary, Mr. Hughes has remained steadfast in denying the allegations of any ownership of the house at Barnard Hill by Paulina or the receipt of payment toward the property at Monchy and has vehemently denied any agreement or arrangement between himself and Paulina. Mr. Hughes through his witnesses has corroborated his assertion that the house at Barnard Hill was dilapidated and was completely rebuilt by him, and that the house which was assessed by the Government was the rebuilt house. Mr. Hughes produced evidence to show that he took personal loans to complete the works to the house at Monchy and was adamant that he did not receive any financial contribution from the claimant toward the partitioning and flooring of the house at Monchy.

[33] In fact, when one looks at the evidence of the contributions which Elizabeth produced by way of the Western Union receipts spanning September 2012 to February 2013 which total USD\$1,200.00 which is equivalent to EC\$3,352.00 and (i) the balance due on the Monchy Property of EC\$76,367.61 as per the letter from the Ministry dated 25th September 2011, (ii) the receipts for materials purchased between 2012 and 2015, (iii) the evidence of the personal loans taken for the purpose of home improvements, the inescapable conclusion is that the claimant has not shown any or any significant contribution by Paulina to the acquisition of the Monchy Property.

[34] Having assessed the evidence, I believe the defendant's version of facts. As Mr. Hughes said, the house at Monchy was a shell and he had to finish the interior. USD\$1,200.00 could hardly accomplish that task. I find that the claimant has not been able to prove on a balance of probabilities that the house that was assessed at Barnard Hill belonged to Paulina. Instead, I believe the defendant's evidence that he rebuilt the house at Barnard Hill starting in 2002 because it is unbelievable that a wooden house built in 1982, would have in 2007, 25 years later, never been in need of repair as Elizabeth said in her evidence or would have a value of \$23,500.00.

Conclusion

[35] In light of the foregoing discussion, I find that on a balance of probabilities that the claimant has not made out a case for constructive trust as alleged, the result of which is that the claim against the defendant has failed and must be dismissed.

- [36] The claimant has been wholly unsuccessful in her claim. This is a mixed claim for declaratory relief, special and general damages in which no application was made to fix a value of the claim for the purposes of prescribed costs. I therefore treat the value of the claim as being \$50,000.00. Having considered the history of this matter, I am minded to afford the parties an opportunity to agree on costs.
- [37] Therefore, the claimant shall pay costs on the claim to the defendant to be agreed within twenty-one days of today's date failing which the claimant shall pay prescribed costs of this claim to the defendant in the sum of \$10,000.00 in accordance with CPR 65.5.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court



Registrar