

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

Case Number: SLUHCV2022/0184

BETWEEN:

PETRONILLA ANTOINE

Claimant

-and-

FLAVIA CHERRY

Defendant

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mrs. Maureen John – Xavier for the Claimant
Mr. V. Dexter Theodore, KC for the Defendant

2024: July 08
October 21

JUDGMENT

Presumption of community property between marriage persons, Article 1192 of the Civil Code of Saint Lucia, Community or Separate property of married persons, Finality of Consent Orders in Ancillary Proceedings, whether a consent order can be reopened and the application of estoppel.

**"The evil that men do lives after them;
The good is oft interred with their bones."
— Julius Caesar, Act 3, Scene 2**

[1] **PARIAGSINGH, J:** This case presents a unique scenario, involving a posthumous divorce dispute. The parties to the original divorce proceedings, Mr. Lawrence Antoine and Mrs. Francillia Antoine (the “deceased parties”), are both now deceased. Their respective executors continue their legal battle. The key issue before the court is whether a property, not specifically dealt with in a consent order that settled ancillary matters in their divorce proceedings, prevents the wife’s estate from asserting a claim

that the property registered in the husband's name is community property, entitling her estate to a half share.

DISPOSITION

[2] The court finds that the consent order, made during the divorce proceedings between the deceased parties, functions not as a mere agreement between them but as an order of the court. It serves as a bar to the reopening of ancillary matters. Additionally, on the facts, the court concludes that the presumption of community property has been rebutted by the evidence presented. It is clear that the property in question, though purchased during the marriage, was acquired after the couple had separated, and it was purchased using Mr. Antoine's own funds, without any contribution from Mrs. Antoine.

[3] Consequently, judgment is entered in favour of the Claimant against the Defendant, as set out in paragraph [38] of this judgment. The Defendant is also ordered to pay the Claimant's costs of the claim in the sum of \$10,000.00.

THE PLEADINGS

[4] The Claimant, by a claim filed on 19 April 2022, seeks declaratory relief concerning the land registered as Block and Parcel Number 0222B 223 (the "land"). The Claimant is the second wife of Mr. Lawrence Antoine, now deceased, who passed away on 25 May 2017. She is also the executrix of his estate and the beneficiary of the said land, including their "matrimonial home," under his will dated 15 July 2014¹.

[5] The Defendant is the daughter of Mr. Antoine and his first wife, Mrs. Francillia Antoine, who passed away on 3 March 2014. The Defendant is also the executrix of Mrs. Antoine's last will, dated 2 May 2008, which does not make any reference to or provision concerning the said land.

[6] Before marrying the Claimant, Mr. Antoine was married to Mrs. Francillia Antoine, from whom he divorced in case number SLUHMT2008/0040. On 22 May 2009, a consent

¹ Clause 5 of the Will of Mr. Lawrence Antoine

order was made by a judge, effectively settling the parties' interest in three properties co-owned by Mr. and Mrs. Antoine. That consent order, particularly its second term, which stated, "*There are no other ancillary matters for consideration*,"² is central to this case.

[7] The Claimant asserts that the consent order settled all ancillary matters between Mr. and Mrs. Antoine, including any claim to community property. She further contends that the land was not community property, as it was acquired after the couple's separation and purchased solely by Mr. Antoine with his own funds³.

[8] The Defendant, on the other hand, argues that the consent order resolved only the matters that were explicitly before the court at that time. She claims that she acted as an intermediary during her parents' divorce and that both her parents intended that the land not be included in the proceedings, as it was to remain community property in which they both held a half share⁴.

THE EVIDENCE

[9] Both the Claimant and the Defendant gave evidence at the trial and were cross-examined. Neither party called any supporting witnesses.

[10] In her evidence, the Claimant stated that she is the executrix of her late husband's estate and that probate was granted on 8 December 2022. She testified that although her husband was divorced from his first wife in 2008, they had been separated for at least 20 years prior to that. During their separation, her husband purchased the subject land in Choiseul, using his own funds.

[11] The Claimant further contended that Mrs. Antoine never visited the property, never contributed to its purchase or upkeep, and had no interest in it. She testified that, before

² Order of the Hon. Mde. Justice R.E. Wilkinson dated 22nd May 2009

³ Paragraph 9.2 of the Claimant's Statement of Claim

⁴ Paragraph 2(f) of the Defendant's defence

marrying her, Mr. Antoine had lived at the property with another woman with whom he also had children.

[12] The Claimant also contends that the Defendant had accepted the finality of the consent order by previously bringing a claim to enforce its terms in separate legal proceedings commenced by the Defendant against her, which were determined in the Defendant's favour⁵.

[13] The Defendant testified that the land was purchased in her father's name, Mr. Lawrence Antoine, during his marriage to her mother, Mrs. Francillia Antoine, by a Deed of Sale dated 30 May 1996. The marriage lasted for 44 years, during which time they had seven legitimate children, including the Defendant, who is the fifth child.

[14] The Defendant's evidence was that the property was intended for agricultural purposes and that both her parents contributed to its purchase. She explained that her mother, who, together with her grandmother, primarily supported her and her siblings after the break down of her parent's marriage and were in a financial position to assist with the purchase of the land.

[15] The Defendant further claimed that during the divorce proceedings in 2008, the land was not mentioned in the ancillary relief consent order of 22 May 2009, as her father had intended it to remain community property. She alleged that she facilitated communication between her parents during the divorce proceedings, and that her father explicitly stated that the land should remain in community between himself and her mother, the Defendant's first wife.

⁵ Claim Number SLUHCV2017/0419 filed on 30 June 2017 to enforce the consent order made in SLUHMT2008/0080 which ended with an order in favor of the Claimant to that claim (the Defendant to this claim)

FINDINGS OF FACT

[16] Having considered the evidence presented by both parties and observed them give their evidence, I find the Claimant to be a credible and forthright witness. Her account was detailed and largely consistent throughout her testimony.

[17] She was candid in acknowledging that the consent order, which settled ancillary matters in the divorce, did not explicitly state that it addressed all property issues between the parties and that portions of her evidence were not matters within her own knowledge and were inferences. Nonetheless, she remained resolute in her position that the property in question was acquired solely by Mr. Antoine with his own funds, well after his separation from Mrs. Francillia Antoine. This acknowledgment of gaps in the consent order and her own evidence suggests an honesty and transparency in her testimony, which the court finds compelling.

[18] The Claimant's evidence that the property was purchased by Mr. Antoine using his personal resources is particularly significant. This key element of her testimony remained largely uncontested during cross-examination a crucial factor in assessing the weight of the evidence.

[19] The Defendant had ample opportunity to challenge this assertion but did not do so convincingly. The lack of cross-examination on this point suggests that the Defendant either accepted the veracity of the Claimant's account or had no substantive evidence to rebut it. This reinforces the court's view that the Claimant's version of events is more credible.

[20] In contrast, I found the Defendant's testimony to be less reliable and, at times, inconsistent. One notable inconsistency arose when she claimed that her mother, Mrs. Francillia Antoine, and her grandmother had contributed financially to the purchase of the property. This claim only emerged during the trial and had not been mentioned in

her initial pleadings or witness statement. The late introduction of this claim, without any corroborative testimony, raises serious doubts about its truthfulness.

[21] The Defendant also asserted that the property was intended to remain community property, despite being registered in Mr. Antoine's sole name. She claimed that her father, Mr. Lawrence Antoine, had specifically instructed her that the property was to be shared between him and Mrs. Antoine. However, the court finds this claim to be implausible for several reasons.

[22] Firstly, no written agreement reflecting such an arrangement has been provided, nor is there any reference to this purported agreement in the divorce proceedings or the ancillary consent order. The absence of any formal documentation or contemporaneous correspondence discussing the alleged exclusion of this property from the divorce settlement is a significant gap in the Defendant's case. It seems improbable that such an important agreement, concerning a substantial asset, would not have been documented, particularly in the context of a formal divorce settlement.

[23] This is particularly so, as the Land Register for the three (3) properties referred to in the consent order reflects Mrs. Antoine as owning them in community with Mr. Lawrence. Conversely, the one property which does not reflect Mrs. Antoine's name on the Land Register is the land which is the subject of this claim. I find it improbable that an agreement to co-own a property on which Mrs. Antoine's name does not appear on the Land Register would be omitted from a consent order, while detailing three properties in the consent order that were already owned in half shares. In my view, it strengthens the Claimant's case that the omission of the land from the consent order is highly indicative that the parties to the divorce accepted that the land was the separate property of Mr. Antoine.

[24] Secondly, the Defendant's suggestion that she acted as an intermediary between her parents during the divorce proceedings and their alleged agreement does not adequately explain the absence of the property from the consent order. Even if the

Defendant did relay messages between her parents, this would not have absolved them of the need to formalize any agreement about the property's exclusion in a legally binding manner. If both parties had indeed intended to exclude the property from the divorce settlement, they could have explicitly done so in the consent order or through a separate agreement. The absence of any such provision strongly suggests that no such intention existed. This is more so as both parties to the divorce had the benefit of legal representation.

[25] Further, the Defendant's suggestion that her father wanted to ensure the property did not pass to his second wife, the Claimant, is also unsupported by any evidence. While the Defendant may believe this to be true, the court requires objective evidence to substantiate such claims. No testamentary documents, correspondence, or other credible forms of evidence were produced to show that Mr. Antoine had expressed any such wishes. On the contrary, the fact that Mr. Antoine left the property to the Claimant in his will, without any conditions or exclusions, indicates that he did not consider the property to be community property but rather his own property which he could of and did dispose of in his will. I do not accept the Defendant's evidence of the alleged agreement as I do not accept her as a credible or honest witness.

[26] The Defendant's suggestion that the land remained community property co-owned by her parents, assuming that I accepted the existence of such an agreement and that this is why the land was not dealt with in the consent order, which I do not believe, contradicts the very law on community property. Even if such an agreement existed, the granting of the decree of dissolution would have brought that community to an end. The parties could not have contracted out of what the law dictates.

[27] On the balance of probabilities, I accept the Claimant's account that the property was purchased by Mr. Antoine after his separation from Mrs. Antoine, using his own funds, and that he intended for the property to be solely his. The documentary evidence, including Land Register showing at entry 1 that on 10 October 1996 by instrument number 4218/96, supports the Claimant's position that Mr. Antoine was the sole legal

owner of the land. The Defendant's claim that the land was intended to remain community property is not supported by any credible evidence and appears to be based more on her personal assumptions and beliefs rather than on verifiable facts.

[28] Additionally, I find the Defendant's overall conduct in these proceedings to be indicative of seeking to revisit issues that should have been conclusively settled during the divorce proceedings. Her reliance on informal conversations and undocumented agreements suggests an attempt to reopen matters that were already resolved by the consent order. The consent order, as I will discuss further in this judgment, was intended to bring finality to the division of assets between Mr. and Mrs. Antoine. The Defendant's attempt to circumvent this finality, without providing any compelling new evidence, cannot be entertained by the court.

[29] In light of the foregoing, I find that the property in question was not community property at the time of the divorce and that it was acquired by Mr. Antoine using his own funds, well after his separation from Mrs. Antoine. There is no credible evidence to support the Defendant's claim that the property was intended to remain community property or that Mrs. Antoine made any financial contributions to its purchase.

WAS THE LAND COMMUNITY PROPERTY?

[30] Legal Community 'commences from the day the marriage is solemnized'; See **Article 1188**. It is dissolved by '1. By dissolution of the marriage; 2. By separation from bed and board; 3. By separation of property; 4. By the absence of one of the spouses, in the cases and within the restrictions set forth in articles 75 and 76.' As stated by Michel JA in **Lesfloris v Lesfloris**,⁶:

"In accordance with article 1192 of the Civil Code, the property of parties to a marriage in St Lucia is either community property or separate property. If it is community property, then each party owns a community moiety or half share in the property; if it is separate property then it is owned entirely by one or the other of the parties"

⁶ SLUHC VAP2015/0018 at paragraph 89

[31] In my view, while the subject property was acquired by Mr Antoine during the subsistence of the marriage, and as such, the presumption that property acquired during the marriage is community property exists, it has been adequately rebutted by the evidence in this case.

[32] I find that the subject property was not community property but was the separate property of Mr Antoine. This is based on my finding that the property was purchased without any intention for it to be part of the dealings between husband and wife, and further, that the purchase of the property was financed by Mr Antoine alone. Further, the non-reference of the land in the Answer of Mrs Antoine, her failure to make any application in respect of the property, or make any mention of the property in her will, on a balance of probabilities, leads me to draw the inference that Mrs Antoine herself accepted that this land was the separate property of Mr Antoine.

THE EFFECT OF THE CONSENT ORDER

[33] The Consent Order, dated 22 May 2009, is a pivotal document in this case. It represents the final legal agreement between Mr. Antoine and Mrs. Francillia Antoine following their divorce. Consent orders, in the context of matrimonial finance, provide finality by resolving all financial claims between the parties. Such orders serve as conclusive agreements, preventing either party from returning to court at a later stage to revisit or relitigate the same financial matters. Therefore, the Consent Order in this case was intended to comprehensively deal with the division of the parties' assets, including any matrimonial property.

[34] The Defendant has argued that the property in dispute was deliberately excluded from the Consent Order, alleging that her father, Mr. Antoine, had intended for it to remain part of the community property to be shared with her mother. However, the legal effect of a consent order is to draw a line under the financial aspects of the marriage. The absence of any mention of this property in the Consent Order is significant and strongly suggests that it was not considered a matrimonial asset at the time the order was made.

Reopening a consent order requires exceptional circumstances, such as fraud or material non-disclosure, none of which have been established here.

[35] It is also critical to note that consent orders are enforceable in the same manner as any other court order. Once a consent order is sealed by the court, it has the same effect as a judgment following a contested hearing. In the present case, both parties were legally represented during the negotiation of the Consent Order, and there is no evidence to suggest that either party raised any objection or sought to include the disputed property as part of the matrimonial assets during the ancillary relief proceedings. Had the Defendant wished to raise any claim over this property, it would have been incumbent upon her to do so at that time.

[36] The Defendant's assertion that the property should have remained as community property and was deliberately excluded from the Consent Order due to her father's instructions is not supported by documentary evidence as stated above. The fact that no formal provision was made in relation to the property, either in the Consent Order or through a separate legal agreement, casts doubt on the Defendant's claim.

[37] Additionally, where parties negotiate a financial settlement, all relevant assets should be disclosed to ensure fairness. If the property in question was indeed a significant asset, it would be expected to feature in the Consent Order. The fact that it does not suggests that neither party, at the time of the divorce, considered the property to form part of the matrimonial estate. Full and frank disclosure is essential in reaching a fair settlement, and any failure to disclose a material asset could lead to the reopening of an order. However, there is no suggestion here that Mr. Antoine failed to disclose the property or that it was omitted due to an error or oversight.

[38] Furthermore, the Defendant's contention that her father intended for the property to remain outside the terms of the Consent Order, while potentially true in her view, cannot override the legal effect of the order itself. A consent order is made, the court will not lightly interfere with it unless there is clear evidence of fraud, mistake, or material non-

disclosure. No such evidence exists in this case, and the Defendant's claim is further weakened by the absence of any documentation to corroborate her assertions.

[39] Even if the property was omitted from the Consent Order as a result of informal discussions between the parties, this would not affect the binding nature of the order. Informal agreements or assumptions made outside of the court process are insufficient to alter the legal standing of a sealed consent order. The finality of such orders is crucial, ensuring that neither party can later revisit settled financial matters unless exceptional circumstances arise. In this case, no compelling reason has been presented that would justify reopening the Consent Order.

[40] Consent orders are designed to bring certainty and closure to financial disputes between divorcing parties. Allowing the Defendant to now claim an interest in the property, more than a decades after the Consent Order was made, would undermine the purpose of the order and the legal principle of finality in divorce settlements.

[41] In conclusion, the Consent Order of 22 May 2009 is a legally binding and conclusive agreement that settled all financial matters between Mr. Antoine and Mrs. Antoine. The property in dispute was not included in the order, and there is no credible evidence to suggest that it was community property or that its omission was a mistake. The legal effect of the Consent Order is to bring finality to the division of matrimonial assets, and the Defendant's attempts to challenge its terms fail in both fact and law. The Defendant is therefore estopped from raising any issues of community property between Mr. and Mrs. Antoine not provide for in the consent order.

COSTS:

[42] The Claimant has been wholly successful in her claim. There is no reason to depart from the general rule that costs follow the event. This is a claim for declaratory relief in which no application was made to fix a value of the claim for prescribed costs. I therefore treat the value of the claim as being \$50,000.00. The Claimant is entitled to her prescribed costs of this claim in the sum of \$10,000.00.

ORDERS:

[43] For the reasons set out above, I make the following declarations and orders:

- 1) **IT IS HEREBY DECLARED THAT** the parcel of land registered as Block and Parcel No. 0222B 223 (the “subject land”) is not community property of the deceased Lawrence Antoine and Francillia Antoine, as it was purchased solely by Lawrence Antoine after the breakdown of his marriage, using his own funds, with the intention of sole ownership; therefore, the subject land is part of the estate of Lawrence Antoine only; and
- 2) **IT IS HEREBY DECLARED THAT** the consent order entered by Hon. Justice Wilkinson in Divorce Proceedings SLUHMT2008/0040 between Lawrence Antoine and Francillia Antoine on 22nd May 2009 settled all property held in community between them.

3) **AND IT IS HEREBY ORDERED THAT:**

- 1) Judgment is entered for the Claimant against the Defendant;
- 2) The Registrar of Lands is directed to remove the Defendant’s caution registered on 7 September 2017 as Instrument No. 3600/2017 on the land registered as Block and Parcel Number 0222B 223; and
- 3) The Defendant shall pay the Claimant’s costs of the claim, on the prescribed scale on a claim having the value of \$50,000.00 in the sum of \$10,000.00.



**Alvin S. Pariagsingh
Judge**

By the Court,

Registrar