

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No. SLUHCV2019/0055

BETWEEN:

LEA CLERSAINT (also spelt CLERCENT)

Claimant

and

STEPHENSON COMPTON

Defendant

APPEARANCES:

Mr. Michael P. St. Catherine for the Claimant
Mrs. Maureen John-Xavier for the Defendant

2020: February 10;
April 28.

JUDGMENT

[1] **PHILLIP, J. [Ag]:** In this action the claimant seeks an order that:

- (1) she be declared the owner of a 20 feet by 30 feet plywood dwelling house ("the House") situate at Up-the-Line in the Quarter of Micoud in Saint Lucia;
- (2) she be entitled to immediate possession of the House;
- (3) should the court find that she is not entitled to possession of the House, she be compensated for all monies which the court determines were expended by her in the construction of same, with interest thereon from the date of construction to date and costs; and
- (4) such other order as the court sees just in the circumstances.

The defendant denies that the claimant is entitled to any of the reliefs claimed and asks the court to dismiss the action with costs to him.

- [2] This case is largely facts based and as such it is proposed to set out in some detail the relevant evidence of both sides. At the trial, the claimant gave evidence and called 3 witnesses, Helena Stanley, Michael Frederick and Joannes St. Marie, in support of her case. Similarly, the defendant gave evidence and also called 3 witnesses, Kurt Clersaint, Sandra St. Marie and Ketra Clersaint, in support of his defence.

The Evidence

The claimant

- [3] By her witness statement filed on 30th October 2019, the claimant states that:
- (1) She is a 47 year old hairdresser who owns and operates her own hairdressing business, 'Lea Hair Salon' at Up-the-Line in Micoud, Saint Lucia. She has been a hairdresser since about 1990; first at Belle Fashions in Dennery, Saint Lucia for about 1 year, after leaving school at age 16 in 1989. Then she worked at Ulua Hair Salon in Vieux-Fort, Saint Lucia until she opened her own hairdressing business at premises rented from one 'Ma Paul' at lower Up-the-Line in Micoud aforesaid and eventually constructed her own salon in or about 2002 at Up-the-Line in Micoud aforesaid where she now still operates.
 - (2) The small one bedroom wooden house, which had no electricity and no water, where she lived with her mother, Madlene Clersaint aka Madlene Clement aka Madeleine St. Marie aka Madeleine Compton ("the deceased") and siblings at Up-the-Line in Micoud aforesaid fell into disrepair. In 1998, in consultation and with the consent of the deceased, she obtained a loan from Bank of Saint Lucia Limited in the sum of \$9,000.00 for the construction of the House. The loan was secured by a Bill of Sale made on 7th May 1998 that is registered at the office of Deeds and Mortgages on 30th May 1998 in Vol. 34, No. 58462 ("the Bill of Sale"). The loan was repaid in or about 3 years by her with personal funds obtained from her hairdressing business.

- (3) The proceeds of the loan and \$6,000.00 of her own monies, were used to purchase materials (the list of which she obtained from her maternal uncles, Thomas St. Marie and Michael St. Marie) at True Value in Vieux-Fort, aforesaid for the construction of the House on the same spot as the small one bedroom wooden house. The materials were stored at the neighbour.
- (4) The foundation, outside plywood and roof of the House was erected over 3 weekends by 'koudmen' with the help of her maternal uncles Thomas St. Marie, Michael St. Marie and Elwin (aka Joannes) St. Marie; her brother Kurt (aka Ambie), a cousin Ti Ras and friends Michael Frederick, Gibo, Kale and a few others. While, the internal partitions, electrical, plumbing, cupboards, fixtures and protective cover of outside plywood were done after the 'koudmen', over 2 weeks of construction by Thomas St. Marie, Michael St. Marie, Ti Ras and Michael Frederick, all of whom were paid by her from personal funds.
- (5) At that time, the defendant, who resided a short distance away from them at New Village in Micould aforesaid, was a friend of the deceased but they were not in a relationship nor did they reside together. The defendant did not provide any assistance nor was he present on site with the construction of the House. Sometime after the construction of the House the defendant began visiting the deceased at the House and she would visit him at his house and even slept at his house. The defendant did not sleep or stay with them until after he and the deceased got married on 18th September, 2009 and he came to live at the House with her permission. He sought her permission on many matters and publicly told people that the House was hers.
- (6) When the defendant came to live at the House in 2009 she was already living in an apartment under the House, which she had constructed by Michael Frederick from her own funds for her own use so that her niece who resided with them could have her privacy as she had become a teenager and was sharing a bedroom with her brother. She remained in the apartment until about 2012 when she left to reside elsewhere for her own safety because of the constant harassment from the defendant, who on one occasion attacked her

with a stick and she had to seek the intervention of the police, but did not pursue legal action against him.

- (7) She paid the electricity bill for the House that is in her name and the deceased paid the WASCO bill. The deceased started paying a rental for the land (the House spot) in 1999 after the construction of the House with funds provided by her. This continued even after she left the House, and she continued to have the keys and access to the House on a daily basis until on or about 6th November, 2018 when the defendant changed the locks to the House because she went to the House in his absence to effect repairs to the roof. This angered the defendant, who came to her salon which is nearby to confront her when he returned to the House.
- (8) By letter from her Solicitor dated 12th November 2018 she requested that the defendant quit and deliver up possession of the House to her but he has since refused to do so, and now resides with another woman at the House. She has thereby suffered loss and damage and have been denied use of the House.

[4] The claimant's evidence under cross-examination was that:

- (1) She started to work at Belle Fashions after leaving school at 18 years rather than 16 years, and that the material for the construction of the House was in fact purchased from Builder's Choice rather than True Value, as previously stated.
- (2) She knew the defendant for 10 to 15 years or even more but when pressed said that she knew him from since she was young person still going to school, and that he and the deceased were friends from since then as she remembered going with the deceased and her siblings to his farms in the country during school holidays.
- (3) She also acknowledged that the deceased, who was hardworking, was the sole breadwinner before she (the claimant) started working; that the deceased worked on the farm and as caretaker of the public laundry; that the deceased cooked the food for the 'koudmen'; and that the deceased had an interest in the House.

- (4) She denied that the defendant moved into the House from day one after it was built because it was his house. She said that the defendant was still at his house when she built the apartment but she also said because of the defendant quarrelling and for her own safety she moved down stairs - the apartment was built after he came to live in the House. Finally, she said I cannot recall if it is after or whilst he was there, but I built my apartment.
- (5) When it was suggested that she was not being truthful because she well knew the House was not hers; because, as she accepted under cross-examination she is able to stand up for herself and is not afraid of the defendant, if it was her house why would she leave and go downstairs or further leave the House and go to rent. She responded that she left for peace sake and for the deceased's health.

Helena Stanley

- [5] Mrs. Stanley stated by her witness statement that she is sister of the deceased, who acquired a small house from Mr. Fergis in 1977 with the assistance of the then Premier, the late Sir John Compton with whom they both worked at the time on his banana estate at Mahaut in Micoud. The small house was moved to lands of one Nicols Emile at Up-the-Line, aforesaid and the deceased resided there with her 5 children. About 1980 the deceased migrated to Martinique to work and returned to Saint Lucia about 1988 and again resided in the small house at Up-the-Line aforesaid with her children.
- [6] She states that in or about 1988 when the deceased returned to reside at Up-the-Line aforesaid the defendant did not reside with the deceased but rather he resided some distance away from the deceased's house at New Village in Micoud. That she is aware the defendant migrated to the USA to work and on his return to Saint Lucia he resided at Jn. Baptiste Hill in Micoud and was involved in a relationship with one Chalerin with whom he fathered 2 children, Pinky 35 years old and Ricky 34 years old. He also has a child at Ti Rocher, Micoud with one Linda and another named Cathy in Micoud.

- [7] Mrs. Stanley is aware that the defendant moved back to reside in his house at New Village in Micoud sometime in the 1990s and he and the deceased became friends; and the deceased, due to the congestion at her house, went to the defendant's house to sleep and returned to her house to her children in the morning. She states that the deceased and the defendant did not live together 30 years as the defendant claims. They began living together at the House after they got married in 2009. She is aware that the House was built by the claimant in 1998 and one Cynthia guaranteed the loan for the claimant to secure the monies for the construction of the House, which was built by her brothers Thomas, Elwin and Michael St. Marie and the claimant's friends. She is also aware that sometime after, the claimant built her salon near to the House and moved from quarters rented from 'Ma Paul' situated at lower Up-the-Line, Micoud.
- [8] Also, she states after the death of the deceased, her nieces, the claimant's sisters, Sandra had said to the defendant, "*you work badly give Lea her house*", while Ketra (spelt Keturah) had demanded he vacate the House but he has failed to do so. The deceased and the defendant did not build the House.
- [9] Under cross-examination Mrs. Stanley initially stated that the claimant has been living with her after the defendant put her out of the House, but when it was put to her that that is not the evidence of the claimant she accepted that the claimant left the House for peace and was in rented accommodation before she came to live with her in November 2018. She denied that she and the deceased were not on speaking terms and states that they were always close from childhood. She admitted that they did not discuss their private business but stated that the information about the House is not what she was told but is what she knows. She denied that the deceased had any share in the House and states that she was present when the claimant told the deceased that she will make a house for them to stay. She also states that she recalls the claimant asking Cynthia to stand with her in 1998.

[10] Mrs. Stanley further stated under cross-examination that when the deceased went to Martinique the children were already 13 and 14 years old because Sandra (the first child) had left school. She also said she could not remember the date the deceased went to Martinique but she spent about 3 years and returned to Saint Lucia in the early 1970's. When confronted with her witness statement she agreed that saying 1970's was not correct and that 1988 as stated therein is correct. She accepted that she was not in a position to say when the defendant and the deceased had a relationship and that she does not know there was a relationship from 1987 to the death of the deceased. She admitted that she did not know when the deceased returned from USA or how long after she came back he had a relationship with Chalerin.

[11] Mrs. Stanley insisted that she was around for the 'koudmen' when the House was being constructed. She acknowledged knowing that the deceased worked but did not know how hard the defendant worked although she knew he had 1 farm. She remembered seeing Kurt (aka Ambie) digging foundation. She stated that the claimant built the salon after the House but cannot remember the year. When challenged she admitted that she could only remember the year 1998. Also, she knows the claimant built the downstairs before the defendant moved into the House with the deceased and family. She denied that the defendant moved into the house immediately after it was built and maintained that it was only after the marriage.

Michael Frederick

[12] Mr. Frederick states he knows the parties to this action from childhood. That he is a tradesman in particular a carpenter and joiner and in 1998 the claimant requested his services as such to construct the House for her. The body of the House (the flooring, outside plywood and the roof) was constructed by 'koudmen' in 3 weekends by him, Thomas St. Marie, Michael St. Marie and Elwin (aka Joannes) St. Marie, Kurt (aka Ambie), Ti Ras, Gibo, and Kale; while the deceased was the cook. Thereafter in a further 2 weeks the internal partition, electrical, plumbing, cupboard, protective covering for the outside plywood were done by

him, Thomas St. Marie, Michael St. Marie and Elwin (aka Joannes) St. Marie and Ti Ras. The defendant was never on site.

[13] Mr. Frederick further stated in his witness statement that he knows that the House was constructed in 1998 sometime after his return to Saint Lucia from Barbados in 1990. This was prior to the marriage of the deceased and the defendant because the marriage celebration was held at the House. That he also built the downstairs apartment to the House for the claimant; and the salon located near to the House in 2002. He and the claimant provided the labour for the salon working on weekends. He is aware that the defendant was in a relationship with one Chalerin at the time the House was built.

[14] Under cross-examination Mr. Frederick admits that he and the claimant have been friends for a very long time and he agreed to be a witness in the case to help her get the House. He acknowledged that the House was built by 'koudmen' on 3 occasions and he worked for 2 weeks doing partition for which he was paid by the claimant \$80.00 per day but could not say if she paid the others. He stated that it was the deceased, who mainly cooked the food for the 'koudmen' and the claimant and Mrs. Stanley helped with the cooking. The cooking he said took place where they were building the House around the small house. He denied that the cooking took place by the defendant's house.

[15] Mr. Frederick under cross-examination also denied that the defendant was there when the House was being built – he did not see him. He did not recall that the House was built before the 1997 general elections. He remembered it being built in 1998. Mr. Frederick acknowledged building the salon, and the apartment below the House at which time the defendant was around but he did not lift a block.

Joannes St. Marie

[16] Mr. St. Marie in his witness statement says that he is a tradesman and the uncle of the claimant. That in 1998 the claimant requested his help in constructing the House and he is aware that she had prior consulted his brothers Thomas St. Marie and Michael St. Marie for help and had requested that they provide a list of the

material to be used. The claimant contacted him when the material was bought and he assisted in carrying the material from the truck and storing it at the neighbour Mr. Arthur Bicar. The following weekend the work started. Thereafter in a further 2 weeks the internal partition, electrical, plumbing, cupboard, and the protective covering for the outside plywood were done. During this phase he, Thomas St. Marie, Michael St. Marie and Ti Ras worked on the construction. The defendant never assisted on site.

[17] Mr. St. Marie further stated that he knows that the House was constructed in 1998 prior to the marriage of the deceased and the defendant as it was at the House the marriage celebration was held. That he is certain at the time the House was built the claimant operated her hair salon at lower Up-the-Line in Micoud in a building owned by Ma Paul, where the claimant operated her hair salon for a few years. That he is certain it was after the House was built that claimant built her hair salon nearby, where she has operated since. He is aware that the defendant was in a relationship with one Chalerin at the time the House was built.

[18] Under cross-examination Mr. St. Marie stated that the small old house was that of the deceased, with whom he had a good relationship. The deceased had asked him to help in the 'koudmen' but he does not agree that the House is the deceased house. He accepted that when the house was being built he did not hear any talk about a loan. The material was stored under a tree covered with a tarpaulin. He acknowledged that the House was built by 'koudmen' but Mr. Frederick was paid because that was the situation; and that the deceased did the cooking for the 'koudmen' with help from the claimant and Mrs. Stanley. Also, that the cooking took place around the house and denied that it took place at the defendant's house. He acknowledged that they used power tools to do the work with electricity from the neighbour. While he was a regular visitor to the old house he does not recall a refrigerator being in the old house. Mr. St. Marie stated that he did not know that the deceased and the defendant had a relationship before the House was built. Also, the defendant was not working with them while the House was being built and he does not know if the defendant purchased the material. He

cannot recall when the salon and the apartment was built although he knows he worked there and they were built after the House.

The Defendant

[19] In his witness statement the defendant states that:

- (1) He is 67 years old and a farmer for all his life. He was in a long term relationship with the deceased from about 1972 for about 6 years and then from about 1987 they recommenced the relationship and lived together in a common law union similar to that of husband and wife until she passed away on 7th June 2017.
- (2) The deceased owned a one-bedroom wooden house where she lived with her 5 children before the House was built. He lived a little higher up the deceased's house in a one-bedroom house also. Because both houses were too small and not convenient for them to live together with the deceased's children, the deceased essentially lived in both houses – she would sleep, cook and wash at his house and would go to her house where her children lived every day to ensure all was in order at that house. He is not the father of any of the deceased children.
- (3) After a long time together he and the deceased got married on 18th September 2009. They always had plans to live together because their living arrangements were not good. Both their houses were in a dilapidated state and was falling apart so they decided that they would build their home together.
- (4) At the time, he worked on 2 farms, at Mal-A-Tague and at Polen, on lands belonging to his family. Bananas were very lucrative business at the time especially in the Micoud area where he worked. The deceased worked very hard with him on the farms and all her children, including the claimant, helped on the farm also, especially on harvest days. Every fortnight, on harvest days they would cut between 140 and 190 boxes of bananas with earnings between \$1,500.00 and \$1,600.00. Occasionally on a low production days they would cut between 80 and 90 boxes of bananas.

- (5) He is a proud hardworking man, who loved the deceased and brought up and cared for her 5 children as though they were his own. He worked hard to help her maintain them.
- (6) In or about 1995 he and the deceased decided to make their living arrangements better. They agreed to demolish her house and rebuild their home in its place. They did not consider taking a loan to build their home - they built it out of pocket. Every fortnight that they got paid from the sale of the bananas, they purchased building materials, which were mainly placed under the deceased's parents' house in New Village in Micoud and a few materials were placed at his residence at the time. When they had purchased enough material to build their home they proceeded with the actual construction of the House (three-bedroom) by 'koudmen'.
- (7) Whilst the House was being constructed, he never heard the claimant speak about the purchasing of material for it. He is aware that the deceased's children who resided in her house before it was demolished and was going to reside in the House made minimal contributions. At no time was it communicated by anyone that the claimant was the owner of the House or would be claiming an interest in it for her minimal contribution towards its construction. He and the deceased purchased all plywood and other wood material for the construction of the House without any support from the claimant or anyone else. After the House was built they all moved into House together and the claimant resided there rent free until she moved out in or about 2012.
- (8) He feels ashamed that the claimant would seek to reduce him as a man to suggest that he would have her build a house for him to live in, he being a hardworking man, working on 2 farms every day except Sundays and making much more money than the claimant could have made at the time. This he said just does not make sense to him.
- (9) It is not true and cannot be true as the claimant said, that she applied for and obtained a loan of \$9,000.00 from Bank of Saint Lucia Limited to build the House because, whereas he could not initially remember the exact year when

the House was built, Kurt refreshed his memory that when the Saint Lucia Labour Party won the election on 23rd May 1997 the House was already constructed and they were living in it. This fact therefore confirms conclusively that the loan taken by the claimant from Bank of Saint Lucia Limited in May 1998 could not have been taken to build the House. It appears that the claimant used the House as security to obtain a loan without anyone's knowledge to build her wooden hairdresser shop and the bedroom downstairs the House.

(10) He is not aware that the claimant purchased material used for the construction of the House but he is aware that very soon after the House was constructed she built a plywood house that houses her hairdressing business next door and an extension downstairs the House which was her bedroom, Therefore if the claimant purchased and stored material under the neighbour's house in 1998 as she alleges it would be for construction of her hairdresser business and bedroom and not for the House.

(11) He states that it is his and the deceased hard-earned labour from the farms that paid for all the plywood and post for the construction of the House which is owned by the deceased and him. At no point during the lifetime of the deceased did the claimant claim an interest in or to be owner of the House. He moved into the House after it was constructed together with the deceased and at the same time as the claimant did.

(12) In or about 2012, whilst the deceased was still alive, the claimant moved out of the House to reside elsewhere because she could not get along with the deceased. He cannot understand why the claimant would leave simply because she could not get along with him as she claims if it was her house. Why did she not ask him to leave then or anytime during the lifetime of the deceased?

(13) After the death of the deceased he changed the lock to the House because he noticed that the claimant, who did not reside there, would go to the House when he was not there and take various household items that did not belong to her including his and the deceased's wedding presents. When he

confronted the claimant on one occasion she told him she does not have to inform him of anything she takes from the House.

(14) On or about November 2018, for the first time since leaving the House the claimant came to the House in his absence to undertake certain works and sent persons to his bedroom without his knowledge, permission or consent, and when he confronted her on the matter she told him she does not have to inform him of anything she does at the House.

(15) It was only after the deceased's death that the claimant sought to unlawfully exercise ownership rights to the House by issuing a Notice to Quit to him on or about November 2018 which he has not complied with because he owns a half share interest in the House and the deceased owns the other half share, which she has left to him as her sole beneficiary in her Last Will and Testament.

(16) Because of the passage of time and that there was never any dispute or issue regarding the ownership of the House, he never maintained receipts of the materials that were purchased and so cannot produce receipts to evidence the purchase of the materials used for the construction of the House.

[20] In cross-examination of the defendant:

(1) He acknowledged he is the father of 3 children, Cathy born 1976; and Pinky Jn. Pierre born 1984 and Ricky Jn. Pierre born 1985 to Chalerin, with whom he had a relationship from 1983 to 1985.

(2) He insisted that the deceased was his first girlfriend before Chalerin, and the relationship with the deceased resumed in 1987; and that he and the deceased did live together in his house from 1987 until the House was built. He acknowledged that the deceased had her own house but states that was where her children lived and she was living with him sleeping, bathing and cooking food at his house and the children would come and eat. That in 1987 the deceased was not his wife but they were good lovers and had a very good and serious relationship.

- (3) He admitted that he never lived in the deceased's house with her children, who were already big children in 1987 but he provided maintenance because only Sandra was working at the time.
- (4) He maintained that he and the deceased were working on the farm for a long time although he could not say how long. And while he admitted that the deceased worked elsewhere he was resolute that on harvest days she went to the farms and not just on weekends. He insisted that he made the amount of moneys he stated he did in his witness statement from working on the farms and selling bananas but accepted that he had no receipts to bring to the court.
- (5) He accepted that Drops was from Micoud but he did not have a conversation with him to come to court to confirm that he bought the materials there, because he thought that he would not need it. He did not agree with the suggestion that he was not making money otherwise he would not have bought the material little piece by little piece as he said. He could not remember exactly how long it took to buy the material little piece by little piece but did not accept that if that was so that the material would have rotted. He denied that the materials he would have bought was to repair his old house but stated that even if that was so the materials went to the House they built.
- (6) He also said that the moneys he spent to build the House was about \$9,000.00 to \$10,000.00 but he had no receipts. He remembered that the House was built in about 4 weekends but insisted that Michael Frederick was not around. The brothers of the deceased were in the 'koudmen' and gave the deceased a big help. He stated that the 2 sets of cupboards, electricals and plumbing were done by 'koudmen'. He accepted that the claimant paid one Adley, a furniture guy in Micoud to build some of the cupboards but stated that it was not her alone, that they all put to get those things.
- (7) He did not accept that he was not there and did not buy any materials for the construction of the House. He states that the House was built in 1996 to 1997. He denied that he did not know when the House was built and it was Kurt (aka Ambie) who told him when the House was built. He insisted that he was there from the beginning, that he did not know that the claimant took a loan but she

did not take the loan to build the House because they had enough material, and if a loan was taken by the claimant it was to build her salon.

- (8) He accepted that the claimant was renting from Ma Paul and had a salon in Micoud but does not agree that she needed a house more than a salon because the house was breaking down and she had a salon. He stated that the salon was built before the downstairs bedroom.
- (9) He denied that the claimant was paying the bills in the House for a long time and states the reason the electricity and telephone were in her name is because they know how to make those transactions better than him. He denied that the claimant kept telling him that the House is hers she built with a loan. He stated the rental of the land where the House is located is on the deceased's name.
- (10) He insisted that he was around or there from the very beginning although he does not have anything to show that he was there and denied that he only came into the House in 2009.
- (11) He admitted going to her salon after the claimant came to the house to do repairs to his bedroom, but denied using abusive words to her and even going after the claimant with a stick. He stated it was the first time that the claimant did repairs to the House but when pressed he admitted that she did come to the House to do repairs before and that she had a key to the House. He said that he did not say anything before because they did not have any problems, and denied bringing a woman to live at the House which caused the problem.

Kurt (aka Ambie) Clersaint

[21] Mr. Clersaint states in his witness statement that:

- (1) He presently lives at Rocky Lane in Dennerly but prior to moving to Dennerly in 2000 he lived at Up-the-Line in Micoud all his life. He knows the claimant she is his sister born to the same mother and they grew up together in the same household.
- (2) From a child he knows the deceased and the defendant to be in a common law relationship. Initially both the deceased and the defendant each had a

one-bedroom wooden house and the deceased spent most of her time at the defendant's house. She lived in both houses.

- (3) The deceased's one-bedroom house was broken down to build the House, while the defendant's house deteriorated and became uninhabitable through the passage of time. The defendant and the deceased have been living together in the House continuously from the day it was completed and they, that is the claimant, his brother Kurby, the deceased, the defendant and him, all moved in. Two of his sister's children who the deceased raised as her own moved in soon afterwards.
- (4) He remembered that the House was built around 1996 to 1997 before the Saint Lucia Labour Party landslide election victory of 16 to 1 in 1997 because at the House he had shown that he was leaning to vote for the Saint Lucia Labour Party and the deceased and other siblings were very strong supporters of the United Workers Party and he recalled that the claimant and some of his other siblings would quarrel with him and would say to him and that if he voted Labour, they would put him out of the House. The 1997 election was the very first year he was going to vote.
- (5) During the time the House was built he was about 21 years old and worked on the farm with the deceased and the defendant.
- (6) Prior to the House being built he knew and saw that the deceased and the defendant purchased building material every fortnight from their earnings from the banana farm from a hardware store in Micoud Village called 'Drops' that is now closed. These materials included plywood, nails, posts and some galvanise. When they purchased the materials they would store the materials under his grandparent's house in New Village in Micoud and some were also placed at the defendant's house.
- (7) He recalls the defendant had an outside kitchen next to his old house which got destroyed. The defendant had purchased materials from a store in Castries to rebuild the kitchen and had placed the material by his house but did not proceed to rebuild the kitchen. Instead when the House was being constructed the defendant used the materials in the House. He assisted in

carrying the material from the van to the defendant's house and then from there to the House.

- (8) The House was built by 'koudmen' from all of his siblings and from his uncles on weekends. The defendant also assisted with the construction of the House.
- (9) He did not know the claimant to have contributed directly towards the construction of the House. She has never spoken about that either. Although, everyone helped in every little way that they could. Throughout the lifetime of the deceased, everyone accepted the House to be that of the deceased and the defendant based on the fact that they built the House together, they moved into the House together and they lived there together until the deceased passed. It is only after the deceased passed away, the claimant has laid claim to the House. The claimant had been living out of the House a few years prior to the deceased death. She moved out of the House and was renting a home.
- (10) In 1998 when the claimant alleges that the loan was taken to build the House, the House was already built. What the claimant did after the House was built is that she constructed a hair dressing salon in plywood and received assistance through 'koudmen' to build it – it is a 17 feet 2 inches by 16 feet 2 inches wooden building. She also built the downstairs of the House in wall where she built a one-bedroom. The hair salon and the bedroom were built about the same time.
- (11) If the claimant took a loan, it definitely was not for the construction of the House but used the House unknown to anyone as security to obtain the loan for the purpose of undertaking the construction of her hair dresser and room referred to above.
- (12) At the time, the claimant was an employee of Sonia Beauty Salon in Vieux-Fort working on a small salary. It appears that she took the loan to build and open up her own hair salon/business and to build the bedroom downstairs the House. The claimant did not have money to build the House, build her salon and the one-bedroom under the House. The claimant did not have the financial ability to do all of this within such a short space of time.

[22] Under cross-examination of Mr. Clersaint:

- (1) He agreed that he was about 12 years old when he knew the defendant. He states that the deceased and the defendant were living in the deceased's old house from the time he knew himself at age 12 years going to garden with the defendant for mostly all of his life.
- (2) He acknowledged working at forestry department for about 2 years but denied being able to recall the years when he worked at forestry department. He insisted that apart from the 2 years working with forestry department he went to garden with the deceased and the defendant and that he only worked with the defendant all his life.
- (3) He agreed that the deceased worked at the laundry which was her main job, and on Saturdays and on boxing days she would go to the garden.
- (4) He said he was sure that the deceased and the defendant were buying material at 'Drops' and this was going on for years. He also said that before the House was built the defendant was living at the defendant's grandmother but he was friendly with the deceased already.
- (5) He does not agree that the materials he was talking about was used to repair his grandmother's house and the defendant's house.
- (6) He agreed that Elvin St. Marie did work on the House but denied that Mr. Frederick worked on the House and the House was built by a loan the claimant took. He said the claimant took a loan to build her salon not the House. He continued that the deceased and the defendant were buying plywood, posts and galvanise for years. It took so long to build the House because they had to save up the materials.
- (7) He denied that he was lying that the deceased went to 'Drops' to purchase materials and stored them under his grandmother's house.
- (8) He acknowledged that the claimant owned and operated her salon in Micoud at Ma Paul, working for herself but insisted that when the House was built she was not working on her own. He states the House was built first before the salon but he cannot recall how long before and the downstairs was built a good time after.

- (9) He insisted that he recalled when the House was built because the claimant and the deceased were saying if he voted for Saint Lucia Labour Party they would put him out of the House.

Ketra Clersaint

[23] Ms. Clersaint states in her witness statement that:

- (1) She lives at Up-the-Line in the village of Micoud. She knows the claimant. She is her sister born to the same mother and they grew up together in the same household.
- (2) From a child she knows the deceased and the defendant to be in a common law relationship. Initially both the deceased and the defendant each had a one-bedroom wooden house and the deceased spent most of her time at the defendant house. She lived in both houses.
- (3) Her siblings the claimant, Kurt and Kurby, all lived in the House. All of her siblings live in Saint Lucia except Kurby.
- (4) The House was built in 1996 to 1997. During the time the House was built she was about 22 years old and worked at BRABO, which is now closed. It was a factory that manufactured children bows and Disney character wash cloths.
- (5) Prior to the House being built she knew and saw the deceased and the defendant purchased building material from a hardware store in Micoud village called 'Drops' that is now closed. These materials included plywood. When they purchased the materials they would store the materials under her grandparent's house in New Village in Micoud and some were also placed at the defendant's house. When the deceased and the defendant had accumulated enough material to build their home they built the House by 'koudmen'.
- (6) She did not know the claimant to have contributed anything towards the construction of the House and she has never spoken about that either. Throughout the lifetime of the deceased, everyone accepted the House to be that of the deceased and the defendant based on the fact that they built the House together, they moved into the House together and they lived there together until the deceased passed. It is only after the deceased passed away,

the claimant has laid claim to the House. Prior to the deceased death, the claimant did not live at the House.

- (7) In 1998 when the claimant alleges that the loan was taken to build the House, the House was already built. What the claimant did after the House was built is that she constructed a hair dressing salon in plywood and received assistance through 'koudmen' – it is a 17 feet 2 inches by 16 feet 2 inches wooden building. She also built the downstairs of the House where she built a one-bedroom in wall, about the same time.
- (8) If the claimant took a loan, she rather suspected that the claimant used the House as security to obtain the loan for the purpose of undertaking the construction of her hairdresser and room referred to above.
- (9) At the time, the claimant was an employee of Sonia Beauty Salon, working on a small salary. The claimant did not have money to build the House, build her salon and build the one-bedroom under the House. The claimant did not have the financial ability to do all of this within a short space of time.

[24] Under cross-examination Ms. Clersaint accepted that she never lived in the House but states she knows the deceased and the defendant were buying material because she saw the receipts. She remembers that the House was built in 1996 to 1997 because of the elections and denies that somebody asked her to say that. She said when the House was being built she was living at New Road in Micoud and she cooked food at the site with the deceased. She maintained that when the deceased bought materials she would come home with the receipts and they stored materials for years that were used to build the House. She denied that the materials that were bought and stored were used to repair her grandmother's house which was not far from the deceased's house.

[25] Ms. Clersaint recalls at the time the House was built the claimant was working at Ulua Salon and that the claimant's salon was built 2 years after the House was built. She maintains that when the claimant built her salon the claimant was working at Ulua Salon and denied ever knowing that the claimant had her own salon at Ma Paul. She denied that she was lying for the defendant or that she said

at the deceased's funeral that she will make the defendant leave the House. Ms. Clersaint eventually acknowledged that she knows the claimant was working and could get a loan to build a house but insists that she knows that the claimant did not build the House.

Sandra St. Marie

[26] Ms. St. Marie states in her witness statement that:

- (1) She lives at La Battiere in the village of Laborie. She knows the claimant. She is her sister born to the same mother and they grew up together in the same household.
- (2) From a child she knows the deceased and the defendant to be in a common law relationship. Initially both the deceased and the defendant each had a one-bedroom wooden house and the deceased spent most of her time at the defendant house. She lived in both houses.
- (3) The claimant, Kurt, Kurby, the deceased and the defendant all lived in the House together with her 2 children Kimberley and Kimroy Charlemagne. She never lived in the House. The defendant moved into the House together with the deceased and her siblings after it was built.
- (4) The House was built in 1996 to 1997. During the time the House was built she was about 26 years old and worked at Hortex, which is now closed. It was a factory that manufactured children's dresses.
- (5) Prior to the House being built she knew and saw the deceased and the defendant purchased building material from a hardware store in Micoud village called 'Drops' that is now closed. These materials included plywood. When they purchased the materials they would store the material under her grandparent's house in New Village in Micoud and some were also placed at the defendant's house. When the deceased and the defendant had accumulated enough material to build a three-bedroom plywood house they built the House by 'koudmen'.
- (6) She did not know the claimant to have contributed directly towards the construction of the House and the claimant has never spoken about that either. Throughout the lifetime of the deceased, everyone accepted the House

to be that of the deceased and the defendant based on the fact that they built the House together, they moved into the House together and they lived there together until the deceased passed. It is only after the deceased passed away, the claimant has laid claim to the House. The claimant had been living out of the House a few years prior to the deceased death.

- (7) In 1998 when the claimant alleges that the loan was taken to build the House, the House was already built. What the claimant did after the House was built is that she constructed a hair dressing salon in plywood and received assistance through 'koudmen' to build it – it is a 17 feet 2 inches by 16 feet 2 inches wooden building. She also built the downstairs of the House where she built a one-bedroom in wall, about the same time.
- (8) If the claimant took a loan, she rather suspected that the claimant used the House as security to obtain the loan for the purpose of undertaking the construction of her hairdresser and bedroom referred to above.
- (9) At the time, the claimant was an employee of Sonia Beauty Salon, working on a small salary. The claimant did not have money to build the House, build her hairdresser salon and build the one-bedroom under the House. The claimant did not have the financial ability to do all of this within a short space of time.
- (10) She recalls that the defendant and the deceased had 2 banana farms in Polen and Malatigue, in the countryside of Micoud that were on the defendant's family land. At the time, the defendant and the deceased sold a lot of bananas, they worked very hard together and it is from those monies that the House was built. She recalls that on banana days they would be removed from school to go to the farm to help carry bananas on harvesting days. The deceased later worked at a community laundry on afternoons after the House was built.
- (11) From the time she knew the defendant from a child he has never stopped working on the farm. His commitment to being independent and working hard has continued even after the deceased passed. He goes to the farm every day of the week except Sundays. He took care of the entire family. What the claimant is trying to do is wrong and she knows that.

- [27] Under cross-examination Ms. St. Marie said that she was born on 14th June 1970 and when the defendant was friendly to the deceased, they (the deceased's children) were still going to school. When probed she acknowledged that she left school at 15 years old and that she was not a child when the defendant got to know the deceased but insisted that he took care of them. She admitted that she never lived in the House and that she rented by one Mr. Henry which was near (within earshot) where Mrs. Stanley resided but denied saying to the defendant that he worked badly and he should give the claimant her house.
- [28] Ms. St. Marie could not recall how long before the House was built she had left home. She states that she knows how the House was built that at the time the deceased and the defendant were working, they had bananas. She knew the claimant was working at Belle Fashion then at Ulua Salon, and that she operated her own salon at Ma Paul. She agreed that at the time there were only 2 hair salons in Micoud. She also agreed that she knew the claimant to be travelling overseas to purchase products for her salon and she would have had the ability to obtain a loan to build a house.
- [29] Further, Ms. St. Marie under cross-examination said that she did not know that the claimant moved downstairs the House to give her daughter, Kimberley, some space. She denied that the defendant went after the claimant with a stick and knowing anything about the claimant building the House. She remarked - she build house and not tell me. Ms. St. Marie states that she was present when the House was being built helping the deceased cook at the defendant's house.

Discussion

- [30] Prior to embarking upon the discussion, it may be useful to say a word on my assessment of the witnesses and to indicate that neither party's evidence is wholly consistent or completely believable. The task of the court, however, in a case such as this is to discern, having seen and heard the witnesses and upon consideration of the evidence (including documents) adduced, what are the facts.

- [31] The claimant, though generally believable, was inconsistent and or appeared confused on certain aspects of her evidence such as when she started to work; where the materials were purchased; how long she knew the defendant; whether the defendant moved in with them before or after the construction of the downstairs apartment; the purpose for constructing the downstairs apartment; and when exactly was her hairdressing salon constructed. While, the defendant was generally measured and consistent in his evidence.
- [32] The witnesses for the claimant, while they were there to support her case, were generally quite forthright in their evidence; although Mrs. Stanley did come across a little officious thus evoking some suspicion on aspects of her evidence. On the other hand, the defendant's witnesses by their aggressive and abusive tone and manner towards the claimant and, in the case of Ms. St. Marie, even towards Mrs. Stanley who she initially denied knowing, it is apparent that the relationship between them is quite acrimonious.
- [33] The defendant's witnesses were also quarrelsome and evasive: They all sought to give the court the impression that the claimant was working for a small salary and initially failed to acknowledge that the claimant had the capacity to obtain a loan to build a house. Ms. Clersaint initially denied passing on the road by Ma Paul in an effort to avoid admitting that she knows the claimant operated her own hairdressing salon at Ma Paul place; while Mr. Clersaint though admitting that he worked with the Fisheries department for about 2 years insisted that the only place that he worked for all his life was with the defendant on the farm. These and other inconsistencies borne out in their evidence certainly arouses the curiosity of the court as to their motive or reason for this posture.
- [34] In the round, therefore, I am more inclined to accept the evidence of the claimant's witnesses, over that of the defendant's witnesses, as being independent and not otherwise improperly motivated.

Claims for declaration of ownership and for possession

- [35] I propose to consider these claims together because they are inextricably linked in that the claim for possession follows only (although not inevitably so) if the claimant succeeds in her claim for a declaration of ownership of the House. The relevant provisions of the **Civil Code of St. Lucia**¹ (the Civil Code) states:

“361. *Ownership is the right of enjoying and of disposing of things in the most absolute manner*

362.

363. *Ownership in a thing, whether movable or immovable, gives the right to all it produces, and to all that is joined to it as an accessory whether naturally or artificially. This right is called the right of accession.”*

- [36] The prescribed rules of the right of accession in relation to movable property² are not exactly applicable to the facts of this case, but what is clear from those provisions is that the ownership of the House will be determined based on who purchased the materials and paid for or obtained the labour used in its construction.

- [37] The claimant’s case is that she purchased the material from the proceeds of a loan obtained from Bank of Saint Lucia Limited for which the Bill of Sale was the security and from additional personal funds. The defendant, on the other hand, disputes that the loan was for the construction of the House because he contends that it was already built by the time of the loan and in any event the materials were purchased by him and the deceased over a period of time piece by piece from ‘Drops’ hardware store.

- [38] Mrs. John-Xavier submits that it is for the claimant to prove her case and that the defendant has nothing to prove. The court accepts this to be true as a general proposition but in the peculiar circumstances of this case the defendant may need to do more than merely say that the House is not the claimant’s house.

¹ Cap. 4.01, Laws of Saint Lucia.

² Ibid, Articles 380 to 393.

- [39] The claimant's evidence is that in 1998 she obtained a loan of \$9,000.00 from Bank of Saint Lucia Limited secured by the Bill of Sale over the House, which was constructed from the proceeds from the loan and her personal funds that was used to purchase the materials and pay Mr. Frederick to build the House. There is also the evidence of Mr. St. Marie that the claimant had asked his brothers for a list of the materials and he had assisted her in storing the materials after it was bought. The defendant contends that the Bill of Sale does not say that the loan was for the construction of the House but rather that the House was being used to secure the loan and the claimant would have accordingly used the House as security without his knowledge, permission or consent. However, apart from these bald statements the defendant has not provided any particulars and or produced any evidence of fraud or wrong doing on the part of the claimant.
- [40] The court notes that the claimant did not produce receipts for the purchase of the materials and that the Bill of Sale is not proof in and of itself that the House was constructed from the proceeds of the loan. However, having seen and heard the witnesses and considering the evidence in the round, on a balance of probability I am satisfied that the materials for the House were purchased by the claimant substantially from the proceeds of the loan.
- [41] The evidence on behalf of the defendant is that the House was constructed in 1996 to 1997 before the general election and not in 1998. In particular, Mr, Clersaint said he recalled this because "*Leah and some of my other siblings would quarrel with me and would say to me and said that if I vote Labour, they would put me out of the house.*" It is curious, though, that it was not the deceased or the defendant, the owners of the House according to him and the defendant's case, who threatened to put him out.
- [42] The defendant's evidence is that the deceased and her children accompanied him to work at his farms, and at the time he and the deceased were earning between \$1,500.00 and \$1,600.00 every fortnight from the sale of their bananas and, according to the defendant's witnesses Mr. Clersaint and Ms. Clersaint (he not

being able to say himself how long), it took them years to accumulate the materials to build the House which the defendant said cost about \$9,000.00 to \$10,000.00.

[43] It is not disputed that the deceased owned a small, wooden, one-bedroom house at Up-the-Line in Micoud where she lived with her 5 children; and that the defendant also owned a small, wooden, one-bedroom house at New Village in Micoud, a short distance away from the house of the deceased, both of which had over time fallen into a state of disrepair. And I accept the defendant's version which is more consistent with the totality of the evidence that since in or about the 1987 he and the deceased were in a personal relationship that involved the deceased sleeping and doing other household activities at his home - a living arrangement the defendant admitted that was not adequate.

[44] I am not convinced by the evidence, without any supporting documents, that the defendant purchased materials for the construction of the House little piece by little piece over a period of years while earning between \$1,500.00 and \$1,600.00 a fortnight to build the House spending, according to him, about \$9,000.00 to \$10,000.00. This seems improbable. Reliance was also placed on the Will of the deceased gifting the House to him; but interestingly the gift was of the House not a half-share therein as would otherwise have been if it is as the defendant claims that they both owned the House. Ms. Clersaint said she saw receipts of the deceased but none was produced in court nor was 'Drops' called as a witness to confirm the alleged purchases of the materials.

[45] The parties both accept that the House was constructed with 'koudmen' labour provided by the claimant's maternal uncles, cousin, brother and friends. There is also evidence from the claimant, Mr. Frederick and Mr. St. Marie that the claimant paid Mr. Frederick for 2 weeks to work on the House and an acknowledgement by the defendant that she paid one 'Adley', a furniture guy from Micoud, to build some of the cupboards. I am not persuaded by the suggestion of Mrs. John-Xavier to the witnesses in cross-examination that no one was paid for working on the House as there is no evidence to support this proposition. Also, I am myself familiar with the

system of 'koudmen', albeit by a different name, and it is inconceivable that an entire house will be built by this method. The more usual practise is that the main structure will be done by 'koudmen' and the finishing works are done otherwise. The preponderance of the evidence is that the food for the 'koudmen' was cooked by the deceased with assistance from others on the site of the construction of the House and the defendant was not present.

[46] In sum, I am satisfied that the claimant constructed the House for the benefit of the deceased and the family. This coupled with the fact that the deceased's house (whatever its condition at the time) was demolished must of necessity in my view giving the deceased an interest in the House a fact emphatically admitted by the claimant in cross-examination. Also, there is the evidence that the deceased assisted with the 'koudmen' and may have gotten the help of her brothers as part of the 'koudmen'. I therefore hold that the claimant and the deceased both have an undivided interest in the House.

[47] The defendant and the deceased were married on 18th September, 2009 sometime after the House was constructed. It is not exactly clear from the evidence when the defendant started residing at the House but it is accepted by everyone that he was residing there at least from the time of the marriage. The deceased died on 7th June, 2017 and prior to her death the claimant moved from the House and went to reside in rented premises but continued to have a key although she no longer resided there with unrestricted access to the House, even in the absence of the deceased and the defendant. This continued until about November 2018 when the defendant changed the locks.

[48] It is undeniable from all the evidence that the House has been the matrimonial home of the deceased and the defendant from the time of marriage and the defendant continues in occupation to present. In light of my decision above that the claimant and the deceased both have an undivided interest in the House, I am not prepared at this time to make an order for possession of the House in favour of the claimant.

Claim for compensation

- [49] I turn now to consider the alternative claim of the claimant to be compensated for all monies expended by her in the construction of the House. Mrs. John-Xavier helpfully reminded the court of the relevant principle of law applicable to a claim for special damages that was pithily put by Lord Diplock in *Ilkiw v Samuels*³ thus:

“Special damages in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularize. It is plain law that one can recover in an action only special damages which has been pleaded and of course proved.”

And by Lord Chief Justice Goddard in *Bonham-Carter v Hyde Park Hotel*⁴, that:

“plaintiffs must understand that if they bring actions for damages it is for them to prove their damages; it is not enough to write down particulars, and so to speak throw them at the head of the court saying ‘This is what I have lost, I ask you to give me these damages.’ They have to prove it.”

- [50] Mrs. John-Xavier submits that the claimant’s claim for re-imbursement of her contribution to the House is a claim for special damages that must be pleaded, particularised and proved. I agree. I note that no special damages were specifically pleaded, particularised or proven by the claimant as to her contribution to the construction of the House. Consequently, this claim abides no further consideration as it fails from the start.

Claim for such other order as the court sees just in the circumstances

- [51] This, however, is not the end of the matter because the claimant has also asked the court to make such other order as the court sees just in the circumstances. Thus, the court is being asked to consider what relief, if any, the claimant may be entitled to in all the circumstances that reflects the justice of the case. The Civil Code rules of the right of accession in respect of moveable property (Article 390) prescribes that “[w]hen the thing remains in common among the proprietors of the materials from which it is made, it must be disposed of by licitation for the common benefit, if any one of them demand it.” Again, while this provision is not exactly applicable to the facts of this case, the Civil Code permits its use as an example.

³ [1963] 1 W.L.R. 991 at 1006.

⁴ (1948), 64 T.L.R. 177 at 178.

[52] Accordingly, although there is no clear evidence what the respective interest of the claimant and the deceased is in the House, I am satisfied that on the totality of the evidence before me a one-third interest or share in the House in favour of the deceased is fair and reasonable. Further, because of the apparent acrimonious relationship between the parties the House must be valued and sold (or either party pays the other) such that the claimant and the estate of the deceased will be paid for their respective undivided share thereof. The undoubted evidence of both parties is that apart from the House, there is a downstairs apartment or bedroom built in wall exclusively at the expense of the claimant in or about 2000 or 2002; therefore the claimant will be entitled to the value of this apartment or bedroom exclusively.

[53] The validity of the Will of the deceased has been raised tangentially but, because it is not a relevant issue to these proceedings, I do not propose to address it and make no comment on same.

[54] Finally, on the issue of costs, which as a general rule goes to the successful party, I have considered the fact that neither party was completely successful on their case. Notwithstanding my finding above that the claimant has a two-thirds interest in the House, she was not successful on the specific prayers of her claim. Therefore, I am of the view that the parties should bear their own costs.

Disposition

[55] I therefore make the following orders:

- (1) The declaration that the claimant is the owner of the House is denied save that the claimant and the deceased have an undivided interest in the House in the ratio of 2 to 1 respectively.
- (2) The claim that the claimant is entitled to immediate possession of the House is refused.
- (3) The claim that the claimant be compensated for all monies which the court determines were expended by her in the construction of the House, with

interest thereon from the date of construction to date and costs is dismissed.

- (4) The House and the downstairs apartment or bedroom are to be valued by a valuator mutually agreed to by the parties within 90 days of this judgment and to be disposed of by licitation, the net proceeds of which are for the benefit of the claimant and the estate of the deceased as set out at paragraph [52] above.
- (5) The parties are to bear their own costs.

**Justice Rohan A. Phillip [Ag]
High Court Judge**

By the Court

Registrar