

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2016/0030

BETWEEN:

CECILIA HIPPOLYTE

Claimant

and

ANSELETUS FRANCIS

Defendant

**BEFORE: Her Ladyship, the Honourable Justice Kimberly Cenac-Phulgence
(A JUDGE IN OPEN COURT)**

APPEARANCES:

Mrs. Lydia Faisal with Mrs. Cynthia Combie-Martyr of Counsel for the Claimant
Mr. George Charlemagne of Counsel for the Defendant

2018: June 27;
September 17, 26;
2019: December 17.

JUDGMENT

[1] **CENAC-PHULGENCE J:** By this claim the claimant, Ms. Cecilia Hippolyte ("Ms. Hippolyte") seeks against the defendant, Mr. Anseletus Francis ("Mr. Francis") the following relief: (a) a declaration that she is the sole owner of the property registered as Block and Parcel No. 1454B 474 together with the house thereon situate at La Feuille, Gros Islet ("the La Feuille Property"); (b) that she be granted immediate possession of the La Feuille Property and that Mr. Francis pay her mesne profits for his use and occupation of that property; (c) a declaration that she is the sole owner of the Suzuki Vitara; (d) a declaration that she is entitled to an

undivided half share in the property registered as Block and Parcel 1049B 344 situate at Careille, Castries (“the Careille Property”) that Mr. Francis held on trust for her and that he be ordered to pay her for her undivided half share thereof; (e) a declaration that she is entitled to an undivided half share in the concrete mixer business and that an expert be appointed to view and value the business and that she be paid half of the value of the business; (f) interest; and (g) costs.

Background

Ms. Hippolyte’s Case

- [2] Ms. Hippolyte and Mr. Francis (together “the parties”) started living together in about 1992 in a common-law relationship which lasted for a period of about twelve (12) years, and which Ms. Hippolyte alleges was a tumultuous one, plagued with abuse and violence at the hands of Mr. Francis. Ms. Hippolyte was nineteen (19) years and a college student and Mr. Francis, thirty-five (35) years when they first started dating.

- [3] Ms. Hippolyte started her first job working on a temporary basis at the Inland Revenue Department whilst still a student in about mid-1992 and then became permanently employed with the Government of Saint Lucia at the Fisheries Department. Mr. Francis was employed as a driver/delivery person in his sister’s business, Business Office School Supplies - BOSS.

- [4] When the parties started co-habiting, they lived at Mr. Francis’ parents’ home in La Clery much to the chagrin of his parents. They subsequently together built a small plywood structure in Mr. Francis’ parents’ backyard which they moved into. At that time, the parties had use of the facilities of the main house and had no major expenses.

- [5] Ms. Hippolyte became pregnant in about March 1993 and the parties then moved to rented accommodation still in La Clery. The plywood structure which they had

built was converted by Mr. Francis into a liquor and grocery shop which he operated with his mother.

- [6] Ms. Hippolyte's case is that in or about August/September 1993 (this was later corrected to May 1994) she purchased a washing machine from Courts (St. Lucia) Ltd. ("Courts") on hire purchase, which she repaid using her own funds earned through her salary from the Government.
- [7] In December 1994, Ms. Hippolyte was announced as the winner of the 1994 Courts Millionaire Prize ("Courts prize") further to a promotion from Courts known as the "Courts Accumulator". It is this prize, which included the La Feuille Property and the Suzuki Vitara that is at the heart of this claim.
- [8] In February 1995, the parties moved into the La Feuille Property. Ms. Hippolyte alleges that from the date Courts delivered the Suzuki Vitara, it has been in the possession of Mr. Francis solely and she was never allowed to drive it.
- [9] Prior to winning the Court's prize, in November 1994, Ms. Hippolyte alleges that she and Mr. Francis purchased the Careille Property for \$29,891.75. That property was registered in the sole name of Mr. Francis, but Ms. Hippolyte states that Mr. Francis assured her that it was theirs in equal shares and represented that it was the intention that they would build their family home on it someday. She says given that the parties agreed to share expenses of the home, Mr. Francis made repayments on the mortgage whilst she paid most of the household expenses. She alleges that he was unable to pay the mortgage and family expenses without her financial input. As a result, Ms. Hippolyte avers that there was a common intention that the land would belong to both parties and she is therefore entitled to a half-share which Mr. Francis held on trust for her. Ms. Hippolyte alleges that Mr. Francis sold the Careillie Property for \$50,000.00 in October 2009 without her knowledge and as result she is entitled to half share of these proceeds.

- [10] Ms. Hippolyte, in or about March 2005 and as a result of what she says was the continued abusive and violent relationship with Mr. Francis, left her job with the Government and fled to England leaving everything. She alleges that Mr. Francis made certain additions to the ground floor of the La Feuille Property without her knowledge, consent or approval and did so even after receiving notice to vacate the said property. The allegation is that these additions were not necessary and were done in bad faith. Despite many verbal requests to vacate the La Feuille Property and a letter to him dated 15th March 2005, Mr. Francis has refused.

Mr. Francis' Case

- [11] Mr. Francis denies that he ever physically or emotionally abused Ms. Hippolyte and says that it was Ms. Hippolyte who started verbally abusing him. Mr. Francis' position is that from the start of the relationship he and Ms. Hippolyte always did things together including purchasing items, and he alleges that there was a common intention that everything was done for both their benefit.
- [12] Mr. Francis alleges that he contributed towards the purchase of the washing machine and that he gave Ms. Hippolyte a monthly sum of \$300.00 from which the hire purchase payments were made before the prize was won. Mr. Francis' position is that the parties had a harmonious relationship at that time and that the washing machine was bought for his benefit also. It is therefore his position that the Court's prize was for their joint use and benefit and therefore Ms. Hippolyte holds a half share of the prize on trust for him.
- [13] Mr. Francis admits to benefitting from the jewellery and clothing which were part of the Court's prize. He also admits that Ms. Hippolyte gave him \$4,000.00 to assist him with purchase of a concrete mixer. Apart from this, he alleges that Ms. Hippolyte was the one withdrawing monies from the Courts Prize and she did not account to him.

- [14] Mr. Francis says that Ms. Hippolyte had reassured him that the La Feuille Property was jointly owned and that it was theirs even though it was in her sole name. It is this assurance Mr. Francis says he relied on to assist with the maintenance and improvement of the property. He spent vast sums of money from his concrete mixing business in doing so, including painting, renovating and building the downstairs of the property all from his own income. He alleges that he has several bills and receipts of his expenditure on the La Feuille Property.
- [15] Mr. Francis admits that he has had use of the Suzuki Vitara from inception but states that this was because Ms. Hippolyte never learnt to drive or obtain a licence. He alleges though, that the vehicle was used for the purpose of the family of which Ms. Hippolyte is well aware.
- [16] Mr. Francis denies that Ms. Hippolyte contributed to his concrete mixer business as she alleges and that the concrete mixer and van which he purchased were through loans obtained in his own name and a contribution of \$10,000.00 from his mother.
- [17] Mr. Francis says that the Careille Property was bought with his sole funds and denies that Ms. Hippolyte has any share therein or that there was any inferred common intention that Ms. Hippolyte would have a share. He consequently denies that she is entitled to any proceeds of its sale.
- [18] Although Mr. Francis denies that his relationship with Ms. Hippolyte was abusive or violent he alleges that in 2005 the parties started having frequent quarrels and Ms. Hippolyte left the La Feuille Property. He denies that he in any way forced or coerced her to leave and says that he has never prevented Ms. Hippolyte from living in the La Feuille Property.
- [19] Mr. Francis requests that Ms. Hippolyte's claim be dismissed with costs and counterclaims against her seeking a declaration (i) that he is entitled to a half

share of the Court's prize; (ii) that he is entitled to a half share in the La Feuille Property and that the said property be valued and he pay Ms. Hippolyte her half share less the improvements which he has made thereto; (iii) that he is the sole owner of the concrete mixing business; (iv) that the Suzuki Vitara be valued and he pay Ms. Hippolyte half share of that value; and (v) that he is the sole owner of the Careille Property.

Issues

- [20] The following issues have been identified for determination:
- (a) Whether Mr. Francis is entitled to any share of the Court's prize?
 - (b) Whether Ms. Hippolyte is the sole owner of the La Feuille Property and the Suzuki Vitara or whether Mr. Francis is entitled to any share thereof which Ms. Hippolyte holds on trust for him?
 - (c) Whether Mr. Francis is entitled to the cost of any improvements to the La Feuille Property?
 - (d) Whether Mr. Francis is the sole owner of the Careille Property or whether Ms. Hippolyte is entitled to an undivided half share therein which Mr. Francis holds on trust for her?
 - (e) Whether Mr. Francis is the sole owner of the concrete mixer business or whether Ms. Hippolyte is entitled to any share therein?

Issue (a)-Whether Mr. Francis is entitled to any share of the Court's prize?

Issue (b)-Whether Ms. Hippolyte is the sole owner of the La Feuille Property and the Suzuki Vitara?

- [21] I address these two issues together, the determination of which will necessitate an examination of the evidence relating to the purchase of the washing machine. It will also involve an analysis on whether there was any intention common to the parties to own all property jointly. This will also be relevant to determination of issue (d) concerning ownership of the Careille Property.

The Evidence

- [22] Ms. Hippolyte's evidence is that she was employed with the Government of Saint Lucia and always earned a larger salary than Mr. Francis. Her evidence is that whereas she was a qualified administrative assistant, Mr. Francis was unskilled. In 1992, according to the various terms and conditions of employment exhibited to her witness statement, Ms. Hippolyte earned a monthly salary of \$1,317.76 which she continued to earn until 1997 when she was promoted, and her salary increased to \$1,711.80. In 2001, she received another promotion and an increased salary of \$2,241.76.
- [23] Ms. Hippolyte's evidence is that on 26th May 1994 and not August/September 1993 as stated in her statement of claim, she purchased a washing machine for the credit price of \$2,123.00 payable by monthly instalments of \$85.00. She says she paid a deposit of \$100.00 as the first instalment and thereafter made eight payments before she won the Court's prize in December 1994. Ms. Hippolyte says she paid off the balance on the washing machine in January 1995.
- [25] Ms. Hippolyte says she purchased the washing machine to assist her with the additional laundry as a result of the birth of her son. Mr. Francis, she said, paid no attention to the washing machine as she was the one who did the laundry. The decision to purchase the washing machine was solely hers and she had informed Mr. Francis of the purchase on the night of 26th May 1994 when he arrived home. She says Mr. Francis knows what the monthly instalments were because she told him.
- [26] Ms. Hippolyte says she bought the washing machine, paid for it from her salary every month and Mr. Francis was unaware that she was making these payments. He never paid any money towards its purchase or any other appliance at that time. She vehemently denies that Mr. Francis gave her any money for the last payment and says that it is only because of the Courts prize that he has said this.

- [27] She says prior to winning the Courts prize, she had lived with Mr. Francis from August 1992 and during that period up to December 1994, she lived off her salary whilst utilizing appliances and utensils from Mr. Francis' mother's home. She says they would both purchase food for themselves as the need arose which they shared with each other.
- [28] She says she was in the habit of purchasing items on credit for her use without assistance from Mr. Francis. She says she purchased some basic items of furniture at Courts at instalments of \$42.00 and \$125.00 monthly. Mr. Francis did not contribute to any of these items. Such items included the baby cradle and dressing table and Mr. Francis never claimed that these items were jointly owned. In fact, Ms. Hippolyte says Mr. Francis purchased items himself such as a stereo set and amplifiers, bookshelves and other items used in the house, but she never considered these jointly owned. Ms. Hippolyte's position is that whilst these items would be used by either party, she always understood that if they were to part ways, the items would belong to Mr. Francis.
- [29] Ms. Hippolyte's evidence is that before their son was born, Mr. Francis did not give her any money for maintenance. Ms. Hippolyte says Mr. Francis never gave her monies to maintain the house as he alleged in his defence. Any money he gave was to help maintain their son and in any event that was only for one year or less. She says after she won the Court's prize, she never received maintenance from Mr. Francis for her son, except the sum of £1,300.00, which he sent whilst they were in England for a school trip.
- [30] Mr. Francis, in his evidence, says the monies to pay for the washing machine came from him and Ms. Hippolyte together, as he gave her \$300.00 monthly for some household expenses. He says categorically that the hire purchase payments for the washing machine and stove were made from that \$300.00. He says that he recalls that the instalment payment was always \$85.00.

- [31] Mr. Francis in cross-examination says for the first time that he paid the last payment to Courts on 30th December 1994 at 1:30 p.m. and that both he and Ms. Hippolyte went to Courts.
- [32] He says that whilst the washing machine was bought solely in her name, Ms. Hippolyte never told him that it was solely hers. He says that the purchase of the washing machine was also for his benefit and therefore all monies and prizes which flowed from that purchase are jointly owned by the parties or Ms. Hippolyte holds a half share on trust for him. He says there was always a common intention that whatever was bought was for their benefit and that of the household.
- [33] Mr. Francis admitted under cross examination that he and Ms. Hippolyte purchased items with their own monies and that indeed, he had purchased the stereo set and other items during the relationship. Ms. Hippolyte was not involved at all in buying these items with him. He also agreed with counsel in cross-examination that if he had to leave, he would keep his stereo because it was a personal item. Mr. Francis also admitted that Ms. Hippolyte was in the habit of purchasing things from Courts and other places without his assistance. He suggests that they purchased things together before the washing machine but nowhere in his evidence does he say this or provide any evidence to support this. Whilst Mr. Francis speaks to him providing for Ms. Hippolyte, he failed to produce any evidence of his earnings to satisfy the Court that he was able to make the contributions that he claims he did.
- [34] The evidence reveals that Mr. Francis could not point to a single item which the parties bought jointly prior to June 2004 when the parties went to Courts and purchased some items of furniture. That was ten years after Ms. Hippolyte won the Courts prize. Ms. Hippolyte's evidence is that Mr. Francis accompanied her and signed as hirer of the items jointly with her although the account was in her name. Ms. Hippolyte says Mr. Francis did not make a single payment towards the

items and after she left in 2005, all the items were repossessed by Courts. Mr. Francis in cross-examination admitted that the June 2004 purchase was the only evidence of any joint purchase by the parties. He admitted that the items were repossessed after Ms. Hippolyte left in 2005 and that he had not produced any evidence of payments or contributions towards payments.

Common Intention

[35] It is clear from inception of the relationship that Mr. Francis and Ms. Hippolyte each managed their own affairs and transactions separately, although they appeared to have an unwritten rule that whatever was brought into the household was for the benefit of them both. This did not evince or translate to a common intention that they would own everything jointly. The attitude displayed by both Mr. Francis and Ms. Hippolyte suggests to me that this was not the basis of their relationship. They seemed to live separate lives although co-habiting.

[36] The evidence of Ms. Hippolyte certainly does not lead me to believe that she had any intention that everything would be jointly owned by her and Mr. Francis. After all, she said in cross-examination that though she left the relationship physically in 2005, she had left mentally and emotionally long before that. Similarly, Mr. Francis indicated that he considered the items he purchased to have been purchased personally and that he would keep these items if he left the relationship. Clearly, Mr. Francis did not treat even the items he agreed they bought together in 2004 as his, because he allowed them to be repossessed after Ms. Hippolyte left in 2005, strongly suggesting that he treated them as being hers. Both parties have claimed that there was a common intention but have chosen to restrict that intention to suit their individual purposes. However, as I have found, the evidence does not support a finding of any common intention.

Ownership of the Court's Prize - the La Feuille Property and the Suzuki Vitara

- [37] The evidence reveals that there were items other than the washing machine purchased from Courts prior to 1994 but Mr. Francis seemed not to be concerned with asserting any rights or entitlement to these or to suggest that he contributed to paying for them. It is quite interesting that it is only the washing machine which seems to have consumed Mr. Francis. Mr. Francis admits that he had no dealings with Courts in relation to the Courts prize and that he never signed the purchase contract for the item. Mr. Francis' evidence is at best contradictory. On the one hand he says he gave Ms. Hippolyte \$300.00 monthly and it is this that she used to make the hire purchase payments. Then he says that they purchased the item jointly and then there was a suggestion that he had contributed \$60.00 to the final instalment. When it was pointed out to him that there was no date corresponding with his evidence that he had made a payment on 30th December 1994, he offered that he went to Courts once and the other payments were indirect.
- [38] Mr. Francis failed to prove on a balance of probabilities that he made any contribution to the purchase of the washing machine and I accept the evidence of Ms. Hippolyte that she paid the instalments solely and that the final payment was made in January 1995.
- [39] Mr. Francis says he and Ms. Hippolyte discussed buying the washing machine. However, that does not assist Mr. Francis as this is in no way proof that he contributed anything to the purchase of the washing machine. I do not believe Mr. Francis' evidence, which I find very calculated to lay a foundation and basis for his claim to the Courts prize.
- [40] It is quite interesting that throughout Mr. Francis' pleadings, he says that the washing machine was purchased for the benefit of both of them and the household. It is clear that the items purchased by either Mr. Francis or Ms. Hippolyte were to be used by either of them, but it is also clear that they each maintained the right to purchase items individually and that these items belonged to them individually although used for the household.

[41] In any event, it is clear that the purchase of the washing machine and the winning of the Courts prize are two distinct transactions. Mr. Francis in cross-examination accepted counsel's suggestion that Ms. Hippolyte did not win the Courts prize because of the purchase of the washing machine but because she chose to place the ticket in the box and that was her personal decision. Had she chosen not to, he agreed that there is nothing he could have done about that.

[42] The Courts prize consisted of:

- (a) A house and land at La Feuille, Monchy registered as Block and parcel Number 1454B 474;
- (b) A brand new 1994 Suzuki Sidekick/Vitara registration number 1271;
- (c) \$100,000.00 cash
- (d) 2 first class tickets to London and £1000.00 spending money;
- (e) \$20,000.00 worth of jewellery;
- (f) \$20,000.00 in fashion from C17 Boutique;
- (g) Groceries from JQ Charles for life.

[43] Mr. Francis admitted in cross-examination that he travelled to England on one of the first class tickets, that he benefitted from the monthly groceries and that as a result he did not have to buy groceries as before, that he also benefitted from the \$20,000.00 jewellery and clothing prizes, and that he has driven the Suzuki SUV from the time it was received from Courts. He also admitted that the vehicle was on hire for a three-year period and he was the beneficiary of the rental amounts. He attempted to suggest that he did not benefit from the \$100,000.00 because everything he got he ploughed back into the La Feuille Property. He admitted that he has lived in the La Feuille Property from 1995 to present.

[44] It is not in dispute that Mr. Francis benefitted tremendously from the Courts prize. Counsel for Ms. Hippolyte, Mrs. Lydia Faisal ("Mrs. Faisal") submitted that the evidence shows that Courts intended to gift Ms. Hippolyte and no one else with the

Courts prize. The items therefore belong solely to Ms. Hippolyte and Mr. Francis has shown no evidence otherwise.

- [45] Counsel referred to the case of **Anicia Savery v Maurison Savery**¹ in support of her case. The facts of that case are similar to the instant, save that the parties in **Savery** were married. Mrs. Savery purchased a freezer from Courts on hire purchase and subsequently was the winner of the Courts' prize. Mr. Savery claimed that he was entitled to a share in the Court's prize on the basis that he had contributed to the instalment payments whilst Mrs. Savery maintained that it was hers solely. The learned judge found in favour of Mrs. Savery and had this to say:

"I further find as a fact that the Petitioner paid all the instalments for the freezer from her separate funds. I reject any notion that Respondent paid any instalment in respect of the freezer. He did not even pay when the freezer was in his sole use and that is why it had to be taken from him by Courts. I go further and accept the submission by learned Counsel for the Petitioner that **even if the deposit for the freezer and the instalments were paid from community funds all that would be the property of the community would be the freezer. I agree that the prize was a reward for the Petitioner's luck.** I also hold that the proceeds of the prize were donations within Article 1192 (2) (c) of the Civil Code and the deed in respect of the Grand Riviere property makes that clear." (my emphasis)

- [46] Counsel for Mr. Francis, Mr. George Charlemagne ("Mr. Charlemagne") argued that the case of **Savery** is not applicable as it dealt with community property of married persons whereas the instant case deals with a common law relationship. I do not agree.
- [47] Mr. Francis has failed to show that he contributed in any way to the acquisition of the washing machine. Even if he had proven that he gave Ms. Hippolyte \$300.00 monthly, he still could not convince me that she did not pay for it from her salary solely. She was gainfully employed and certainly could have afforded the monthly instalments. Whilst **Savery** was dealing with married persons, that does not

¹ SLUHMT1990/0001 (delivered 15th May 1991, unreported).

render the principle enunciated by the learned judge any less applicable here. As in this case, Mr. Savery was arguing that he was entitled to a half share in the Courts prize by virtue of the fact that he had made a contribution to the purchase of the freezer which the learned judge rejected. The learned judge held that even if he had found that Mr. Savery contributed to the purchase of the freezer, it is only the freezer in which he could claim a share. What is instructive is that the court found that the Courts prize was not won because of contribution of either party but by the personal luck of Mrs. Savery. Had she not taken part in the draw, no amount of payment for the freezer could have won her the prize. Likewise, Ms. Hippolyte, having taken part in the draw, was the recipient of the Courts prize solely as a result of her personal luck.

[48] I therefore find that the Courts prize is the sole property of Ms. Hippolyte. The evidence shows that as a result of this prize, the land was transferred to Ms. Hippolyte by Deed of Transfer by Global Perspectives Limited executed on 8th February 1995 and in that deed it is stated that Courts (St. Lucia) Limited intervened for the 'purpose of donating the building erected on the said portion of land and valued at \$257,685.00'. The evidence cannot be clearer.

[49] The Suzuki Vitara was registered in Ms. Hippolyte's sole name. If there was any intention on Ms. Hippolyte's part to have Mr. Francis as a co-owner, this could easily have been done when the vehicle was being registered or he could have been named in the insurance policy. Neither was done.

[50] What is clear is that none of these items were acquired by the parties. They were the subject of a prize won solely by Ms. Hippolyte and therefore the question of trust does not arise. There is nothing that Mr. Francis could have contributed to their acquisition to support him having a share in any of the prize items.

[51] Despite the fact that Ms. Hippolyte won the Courts prize solely, Mr. Francis benefitted from it which he has not denied. This is in keeping with both their

evidence that though they purchased or acquired things separately, they shared them. It was Ms. Hippolyte's choice to share her prize with Mr. Francis. He has got much more than he was entitled to. Except for the period 1995-1998, when the vehicle was on lease to Hertz Car Rental, Mr. Francis has had the benefit and use of the Suzuki Vitara from inception. Ms. Hippolyte's evidence is that even after she obtained her licence in 2001, Mr. Francis refused to give her the keys and criticised her driving ability. The monies earned from the rental arrangements with Hertz Car Rental were collected by Mr. Francis and he never accounted or gave her any money from the earnings. Mr. Francis accepted in cross-examination that he benefitted from the Hertz Car Rental contracts. He did not suggest what he did with those monies.

[52] Mr. Francis has been residing at the La Feuille Property from 1995 and even after Ms. Hippolyte asked him to vacate the property in March 2005 by letter from her legal practitioner he continued to remain in the property and to assert his right to a half share entitlement. Mr. Francis has had the benefit and enjoyment of the property to the exclusion of Ms. Hippolyte since 2005.

[53] The evidence is clear that the Courts prize generally, and the La Feuille Property and Suzuki Vitara in particular, are Ms. Hippolyte's sole property and I so declare. There is no evidence that Ms. Hippolyte intended that the winnings from the prize were joint in any way. Any benefit that Mr. Francis has received would be as a result of Ms. Hippolyte's generosity towards him.

[54] As to Ms. Hippolyte's claim for mesne profits, she does not indicate in her claim for what period she makes the claim. In submissions, it was suggested that it was from March 2005. She claims a monthly sum of \$1,500.00 but has provided no evidence to support that value. The evidence does however show that Ms. Hippolyte left the La Feuille Property in 2005 and wrote to Mr. Francis in March 2005 requesting that he leave the house. It would then take her another eleven years to bring this claim against Mr. Francis.

[55] A licensee is a person whose entry onto land has the express or implied permission of the landowner but who does not have a formal interest in the land. A gratuitous or bare licence exists where the licensee provides no consideration for the permission he has obtained. It is accepted that although there may be no express permission, the circumstances may give rise to an implied licence.² I found above that the La Feuille Property is the sole property of Ms. Hippolyte and that Mr Francis has no interest therein; that nonetheless their practice was to share the use and benefit of property acquired during the course of their relationship; and that they lived together in the house from 1995 until 2005. Based on these findings, I conclude that Mr. Francis had Ms. Hippolyte's implied permission to enter and occupy the La Feuille Property, for which he paid no consideration, making him a gratuitous licensee. When the letter was sent in March 2005 requesting that he vacate the property, this amounted to a revocation of the license, and thereupon Ms. Hippolyte became entitled to possession of the La Feuille Property. In respect of any period for which Mr. Francis remained in possession/occupation of the property thereafter, he did so wrongfully and as trespasser. Consequently, Ms. Hippolyte is entitled to mesne profits for such period, subject to any limitation period.

[56] A similar case is that of **Morris v Tarrant**.³ In that case it was held that a divorced husband, who remained in possession of the former matrimonial home owned by his former wife, became a trespasser upon decree absolute. The Court declined to find that any licence was presumed from his occupation for over three years thereafter, during which there were negotiations for sale to him. As he was a trespasser throughout this period, his former wife was held entitled to mesne profits for the period of his occupation.

[57] **Halsbury's Laws of England** describes the action for mesne profits thus:

² Claims to the Possession of Land/Part A: Possession from Trespassers and Licensees/A1 Trespassers and licensees/Licences, paragraph A1.3.

³ [1971] 2 QB 143

“Where a defendant has been in wrongful occupation of the claimant's land, the claimant has a specialised action for trespass known as the action for mesne profits. The normal measure of recovery in an action for mesne profits, savouring more of restitution than damages for loss, is the market rental value of the property for the period of wrongful occupation, without any deduction (save perhaps as is taken into account in the court's assessment of the realistic market rental value) for the fact that the claimant might not have been able to let the property or otherwise profit from it had the defendant not been there.”⁴

[58] Mesne profits may be claimed from the date on which the landowner became entitled to possession and are payable until such date as the trespasser actually yields up possession of the premises.⁵

[59] The basic underlying premise is that a trespasser shall not make use of another person's land without properly compensating that person for his use. Calculated on a restitutionary basis, it seeks to identify the extent to which the trespasser has been unjustly enriched by his occupation and to make him disgorge an appropriate sum for the right to occupy he has wrongfully taken. It is for this reason that mesne profits are payable whether or not the landowner is caused loss by the wrongful occupation.⁶

[60] Although the primary measure of calculating mesne profits is the ordinary letting value of the premises as at the date of the trespass, there may be circumstances in which the appropriate sum may be determined by the court conducting a valuation exercise involving a hypothetical negotiation between the parties. Such hypothetical negotiation should be taken to occur at or just before the trespass occurred in which both parties, acting reasonably, agree a sum which the trespasser would pay for his continuing occupation. The factors to which the Court would have regard include: what the trespasser acting reasonably would pay to

⁴ Halsbury's Laws of England/Damages (Volume 29 (2019))/7. Measure of Damages in Tort/(2) Torts other than Those Involving Personal Injury/(ii) Torts Affecting Land/421. Trespass to land; wrongful use and occupation.

⁵ Hill and Redman's Law of Landlord and Tenant/Division A General Law/Chapter 15 Possession/C Consequences of failure to deliver up/2 Mesne profits, paragraph (b) [5188]

⁶ Hill and Redman's Law of Landlord and Tenant/Division A General Law/Chapter 15 Possession/C Consequences of failure to deliver up/2 Mesne profits, paragraph (b) [5185]

remain in possession; what the premises would let for in the open market; the cost to the trespasser of relocating to such alternative accommodation as may be available; the negative effect of the trespass on the landowner; and the benefit received by the trespasser, though not forcing him to disgorge all of the profits made as a result of his wrongdoing, otherwise the hypothetical negotiators would probably not strike a bargain.⁷

[61] Though the monthly sum of \$1,500.00 is unsupported by evidence as being the market rental value of the La Feuille Property, the sum appears more than reasonable, being a complete house valued in 1995, at the sum of \$257,685.00 and located in a fairly desirable community. This sum has not been challenged by Mr. Francis as in any way being unreasonable. In hypothetical negotiations, I find that this sum would likely have been agreed to by Mr. Francis as monthly rental for the property.

[62] However, given that mesne profits is the measure of damages for trespass to land which is a tort, I am of the view that it is subject to the relevant limitation period which is that of three (3) years per article 2122(2) of the **Civil Code**⁸. Therefore, Ms. Hippolyte is only entitled to mesne profits for the period 20th January 2013 to 20th January 2016, the three years immediately preceding the filing of this claim. I would therefore order Mr. Francis to pay the sum of \$1,500.00 per month from 20th January 2013 to the date of his vacation of the La Feuille Property.

Issue (c)-Whether Mr. Francis is entitled to claim for any improvements to the La Feuille Property

[63] Having found that Ms. Hippolyte is the sole owner of the La Feuille Property, the issue is whether Mr. Francis is entitled to any improvements which he says he made to the said property. Ms. Hippolyte's position is that Mr. Francis is not so entitled. Ms. Hippolyte's evidence is that she does not consider the structure

⁷ Hill and Redman's Law of Landlord and Tenant/Division A General Law/Chapter 15 Possession/C Consequences of failure to deliver up/2 Mesne profits, paragraph (b) [5187]

⁸ Cap 4.01 of the Revised Laws of Saint Lucia.

constructed at the bottom of the house to be an improvement to the property because the workmanship is not in keeping with the rest of the house. Ms. Hippolyte says that the house she received was a complete house and did not require any addition to be made to it. The addition is wholly unnecessary and was done solely for Mr. Francis' personal needs of storing his equipment and tools.

[64] Ms. Hippolyte further says that even after she asked Mr. Francis to vacate the property he continued to live in it rent-free and benefitted from all the conveniences that it contained. He has therefore overcompensated himself for any improvements that he made to the house by his use and occupation of it for the past thirteen years.

[65] Mr. Francis' evidence is that as a result of Ms. Hippolyte's assurance that the La Feuille Property was theirs he contributed to its maintenance and improvement. He says he spent large sums of money on the property. He says he paid for the fencing, painted, renovated, and replaced fittings and fixtures. Although Mr. Francis said in his defence in 2016 that he had a voluminous number of receipts and bills which he would be relying on at trial, in his witness statement he says that he realized after filing his defence and upon examining the receipts, that most were faded and not suitable to be used. He has therefore not produced a single receipt in support of the improvements.

[66] Mr. Francis says he built downstairs the La Feuille Property with monies from his concrete mixer business and that the improvements to the property were done in good faith while Ms. Hippolyte and their son lived in the said property. He asks that he be paid for the improvements made thereto. He speaks to relying on a valuation survey report which was not filed at the time of the filing of the witness statement. That report was subsequently filed on 25th June 2018, two days before the trial.

[67] The valuation report having come so late in the day was clearly disadvantageous to the claimant who would not have had the benefit of being able to get her own valuation done. The author of the report is not a witness in the matter and therefore there was no opportunity to cross-examine. I am unable to place any weight on the valuation report, as apart from its late introduction into the proceedings, it simply provides a value for the structure constructed downstairs, but does not assist in determining whether in fact it was an improvement. The valuation concludes by providing a total valuation of the entire property as a whole.

[68] Even if the building of the storage area on the ground/bottom floor of the building could be said to be an improvement, it was done after Ms. Hippolyte left the house in 2005 and had written to Mr. Francis and requested that he vacate the property. It was clearly not the improvement which he seemed to be referring to in his evidence as improvements done whilst the parties lived together. The evidence is clear that after March 2005, Mr. Francis still went ahead and expended money to construct the storage area. The purpose of the addition was to serve as storage for his tools and equipment. That improvement was clearly undertaken solely for Mr. Francis' benefit and not that of the property as a whole. Mr. Francis has attempted to suggest that the day to day maintenance, painting and small renovations were all done by him from the time the parties moved into the house and that these were all improvements. However, he has not produced one single receipt in support of his contention. In any event, any work that he undertook in the earlier years would have been for his benefit as well, as he enjoyed rent free accommodation and continues to do so to date.

[69] I do not find that Mr. Francis has proven any improvement to the La Feuille Property which he was obliged to undertake. I agree with Mrs. Faisal that in any event he would have been more than compensated for any monies he expended as he lived rent free in the said property for the last fourteen years. I therefore dismiss any claim by Mr. Francis that he is entitled to be paid the value of improvements which he made to the La Feuille Property.

Issue (d)-Whether Ms. Hippolyte is entitled to an undivided half share in the Careille Property and Mr. Francis holds same on trust for her?

- [70] Ms. Hippolyte claims that she is entitled to an undivided half share in the Careille property. Her evidence is that when the Careille Property was purchased in November 1994, Mr. Francis had told her that it was for the purpose of building a house for the family. She says she considered that she would have to pay the bills to allow Mr. Francis to pay the mortgage comfortably. Ms. Hippolyte says that all the talk of building a house for them ceased after she won the Courts prize in December 1994. From Ms. Hippolyte's evidence, she discovered, through her son Khem, that Mr. Francis had sold the property and had said that he had put half of the proceeds on an account for him, which he could access when he turned eighteen. According to Ms. Hippolyte, that never happened.
- [71] Mr. Francis' evidence is that he purchased the Careille Property with his sole funds. He says that Ms. Hippolyte never contributed to the purchase of the Careille Property. He uncategorically denies that Ms. Hippolyte has any share, title or right in that property or that there was any inferred common intention that she would have a share.
- [72] Mr. Francis provided evidence of the deposit which was paid to secure the Careille Property in October 1993, the confirmation of purchase dated 25th July 1994 and the letter confirming instructions for preparation of a mortgage in relation to the Careille Property. The evidence confirms that the funds for the purchase of the Careille Property were obtained by way of loan secured with Barclays Bank PLC (as it was at the time) in Mr. Francis' name. The Deed of Sale was executed in November 1994 and registered in December 1994 in the sole name of Mr. Francis. The evidence also confirms that the Careille Property was sold in October 2009 for the price of \$50,000.00.

- [73] Ms. Hippolyte produced no evidence of any financial contribution to the purchase of the Careille Property and acknowledges that she did not so contribute. Mrs. Faisal, argued that the loan for the purchase of the said property was serviced at a time when Mr. Francis benefitted from cash advances and donations from Ms. Hippolyte's Court's prize. She submitted further that Mr. Francis had not proven that he was in a position to pay a mortgage on his own without the assistance that he obtained from Ms. Hippolyte's Court's prize.
- [74] On the other hand, Mr. Charlemagne, submitted that the documents produced by Mr. Francis clearly show that the Careille Property was purchased by Mr. Francis separately and with his own funds.
- [75] Mrs. Faisal in her closing arguments, pointed to Mr. Francis' statement in cross-examination that Ms. Hippolyte has a share in the Careille Property (which was different from what he had asserted on his defence) as evidence that there was intention that the property would be owned jointly. Mr. Charlemagne on the other hand says that Mr. Francis' statement was made in the context of 'just as he has a share in the La Feuille Property and the other Courts prize items so too should Ms. Hippolyte have her share in his property'.
- [76] I am of the view that this statement by Mr. Francis in cross-examination was merely self-serving as he clearly thought that by making such an admission, it would augur well for him in relation to his claim to the Courts prize and especially the La Feuille Property and the Suzuki Vitara. I am not convinced that he would say the same if he recognised that he did not stand to benefit from the La Feuille Property or the Suzuki Vitara.
- [77] From the evidence presented, Mr. Francis secured the funds to purchase the Careille Property from the bank on his own. Negotiations for the loan were all in Mr. Francis' name. Whilst Mrs. Faisal says Mr. Francis produced no evidence that he could afford to pay the mortgage instalments on his own, it must be accepted that Mr. Francis obtained the loan which must lead to the conclusion that the bank

was satisfied that he could meet the monthly repayments based on the information it would have obtained from Mr. Francis. If in fact Mr. Francis was assisted in servicing the loan by the cash advances and donations from Ms. Hippolyte's Court's prize, this was the result of her decision to share the benefit of her prize with him. Such generosity does not give rise to a common intention to own the property jointly without more and consequently any interest therein.

[78] Mrs. Faisal argued that even absent any express common intention, there is sufficient information before the Court to permit the Court to declare the existence of a trust in Ms. Hippolyte's favour in relation to the Careille Property, although counsel did not elaborate on this submission.

[79] I have considered the law relating to constructive trusts and the House of Lords decision of **Stack v Dowden**.⁹ In that case, Lord Hope, departing from **Lloyds Bank plc v Rosset**¹⁰, emphasised that when deciding whether a constructive trust existed:

“...indirect contributions, such as making improvements which added significant value to the property, or a complete pooling of resources in both time and money so that it did not matter who paid for what during the relationship, ought to be taken into account as well as financial contributions made directly to the purchase of the property.”¹¹

[80] Therefore, Lord Hope was of the view that because the couple had maintained their financial independence from each other throughout their relationship, the appeal should be dismissed and the Court of Appeal's allocation of a 65-35% split should be upheld rather than the 50-50% split that the High Court had decided.

[81] Baroness Hale established that the onus is on the person seeking to show that the beneficial ownership is different from the legal ownership and identified the key question in cases such as this as being: “did the parties intend their beneficial interests to be different from their legal interests?” She acknowledged that cases

⁹ [2007] 2 AC 432.

¹⁰ [1990] UKHL 14.

¹¹ At 432, paragraph [12]

of this type would be very unusual. Baroness Hale stated that, contrary to **Lloyd's Bank plc v Rosset**, many factors other than financial contributions may be relevant to divining the parties' true intentions, such as any discussions at the time of the transfer which cast light upon their intentions; the reasons why the home was not acquired in their joint names; the nature of their relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both the initial purchase price and the subsequent mortgage payments; how the parties arranged their finances, whether separately or together or a bit of both; how they managed any outgoings on the property and how they discharged their household expenses.

[82] Baroness Hale stated that these and other factors should be taken into account when deciding whether the parties' beneficial interests should be different from their legal interests and whether a constructive trust existed¹². Because the parties had kept their finances rigidly separate, Baroness Hale was of the opinion that, taking their entire course of conduct into account, the appeal by Mr Stack should be dismissed and the Court of Appeal's order of a 65/35% split in favour of Ms Dowden should stand.

[83] Based on my findings earlier as regards common intention of the parties, I do not accept that when the Careille Property was purchased, Mr. Francis intended that it would be joint property of the parties or that Ms. Hippolyte was made to think it was theirs jointly. There was no pooling of resources or any evidence from Ms. Hippolyte as to what her contribution to this purchase was.

[84] I am even more persuaded of this position when I consider the evidence of Ms. Hippolyte, in her witness statement, where quite interestingly, she says that the purchase of the Careille Property and her intention to assist Mr. Francis did not change her view of the relationship as one that she would leave at the appropriate time. This evidence further shows that there was never any common intention that

¹² At 432, paragraph [69].

the parties would own everything which they acquired jointly, even more so where it was individually purchased.

- [85] I therefore find that the Careille Property was the sole property of Mr. Francis. The property was sold in 2009 and accordingly the proceeds of sale of the said property are Mr. Francis' solely and he does not hold any share of these proceeds on trust for Ms. Hippolyte.

Issue (e)-Whether Ms. Hippolyte is entitled to a share of the concrete mixer business

- [86] Ms. Hippolyte claims that she is entitled to a half share in the concrete mixer business which Mr. Francis denies. Ms. Hippolyte's evidence is that the business started in 1996 after she won the Courts prize and after the purchase of the Datsun van. She says she gave Mr. Francis the deposit to make the initial payment towards the mixer and as the mixer earned money, it was paid off. She says she also gave Mr. Francis \$5,000.00 to purchase the Datsun van. She says that she never knew anything about Mr. Francis' mother contributing \$10,000.00 towards the deposit and this is the first time she heard this. Interestingly, in her statement of claim, Ms. Hippolyte stated that she purchased a used van and three concrete mixers using her sole funds. That is clearly different from what she said in her witness statement.
- [87] As time went by, Ms. Hippolyte says the business expanded and more mixers were purchased. She said the business expanded and eventually had about ten mixers. She says the business came about as a result of the Courts prize and because Mr. Francis had access to the rental money for the Suzuki Vitara from Hertz Car Rental. She estimates that Mr. Francis earned about \$2,500.00 to \$4,000.00 per month.
- [88] Mr. Francis' evidence is quite different. He says he bought the concrete mixer and Datsun van by way of loans which he obtained in his own name (although he

produces no such evidence) and a contribution of \$10,000.00 from his mother. He says he got \$1,000.00 when he sold the Datsun van which he used to pay household bills. Mr. Francis' exhibits reveal that he bought several concrete mixers during the period 1997 to 2009. Ms. Hippolyte suggests to the Court that Mr. Francis was only able to expand the business because he no longer had to buy groceries as a result of the Courts prize. Mr. Francis acknowledges that Ms. Hippolyte gave him \$4,000.00 but he says this was towards the third and not the first mixer. Then later on he says she gave him \$4,000.00 towards the purchase of the Datsun van and he put the other \$1,000.00. It was suggested to Mr. Francis in cross-examination that closer to the time when Ms. Hippolyte won the Courts prize, he spent more on the concrete mixers to which he replied that he had two loans and also that the business was making money.

[89] Beyond the two monetary contributions presumably in 1996, Ms. Hippolyte gave no evidence of any other direct contributions to the business. Counsel for Ms. Hippolyte suggests that without evidence of any express common intention that the concrete mixer business was jointly owned, the Court can imply a trust in Ms. Hippolyte's favour since the evidence of her direct contribution has been admitted by Mr. Francis. Counsel also suggests that Mr. Francis used the Suzuki Vitara to haul the concrete mixers and never paid for use of the vehicle.

[90] In cross-examination, Ms. Hippolyte agreed that besides the initial purchase, she really did not know what was going on in the business; she did not have any part in running the business; she did not have access to any accounts of the business; she did not know anything about the concrete mixers aside from the number which Mr. Francis had over the years; she knew nothing about how they were maintained or who fixed them when they were broken; she could not say for certain how much money the business earned.

[91] Although Mr. Francis admitted that Ms. Hippolyte contributed to the purchase of the Datsun van and the third concrete mixer, this is not sufficient to infer a trust. I

view these as Ms. Hippolyte's contributions to the business venture which she chose to make. Ms. Hippolyte's evidence is highly speculative. The fact that Mr. Francis spent a large sum of money on the purchase of mixers over the years could very well be attributable to the fact that there was a demand for concrete mixers and the business was thriving as opposed to the fact that Ms. Hippolyte's Courts prize presented a break for Mr. Francis which meant that he could channel the monies he spent on groceries into the business. The evidence is just too scant to lead to a conclusion that Ms. Hippolyte has a share in the concrete mixer business. Certainly, from her attitude at trial, she appeared quite indifferent and not as someone who had any interest/share in a business. I therefore find that Ms. Hippolyte is not entitled to any share in the concrete mixer business.

[92] I must agree with Mr. Charlemagne that this Court was left to make sense of the vague and nebulous nuances of this story and the Court can only seek to do what it considers just based on the evidence which it has. I therefore wish to sincerely apologise to Counsel and the parties for the delay in delivering this judgment.

Conclusion

[93] Based on the foregoing discussion, I make the following order:

- (1) The parcel of land registered as Block and Parcel 1454B 474 together with the residential building thereon ("the La Feuille Property") is hereby declared to be the sole property of Ms. Hippolyte.
- (2) Ms. Hippolyte is granted vacant possession of the La Feuille Property (land and house) and Mr. Francis is to vacate the said property on or before 31st January 2020.
- (3) Mr. Francis is to pay mesne profits to Ms. Hippolyte of \$1,500.00 monthly for use and occupation of the La Feuille Property from 20th January 2013 to the date of judgment, 17th December 2019 and thereafter at the rate of \$1,500.00 monthly from the date of judgment to the date of his vacation of the La Feuille Property together with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment.

- (4) Ms. Hippolyte is hereby declared to be the sole owner of the 1994 Suzuki Sidekick/Vitara and the said vehicle is to be delivered to Ms. Hippolyte forthwith.
- (5) The Court declares that the property registered as Block and Parcel 1049B 344 ("the Careille Property") was the sole property of Mr. Francis and Ms. Hippolyte is therefore not entitled to an equal or any share in the said property or the proceeds of sale thereof.
- (6) The concrete mixer business is declared to be the sole property of Mr. Francis and Ms. Hippolyte is not entitled to any share therein.

Costs

- [94] Ms. Hippolyte was only successful in relation to three of the five substantive reliefs which she sought. Mr. Francis has succeeded on two of the six substantive reliefs which he claimed in his counterclaim. The prescribed costs on the claim is to be based on the amount of mesne profits calculated to the date of vacation of the Property. Prescribed costs on the counterclaim is in the sum of \$7,500.00 based on a value of \$50,000.00.
- [95] In the circumstances, I order that Mr. Francis is to pay prescribed costs on the claim to Ms. Hippolyte in accordance with CPR 65.5, discounted by 40% to reflect her partial success on her overall claim. Ms. Hippolyte shall pay prescribed costs to Mr. Francis on the counterclaim discounted by 65%, calculated at \$2,625.00.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar