

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

CLAIM NO. SLUHCv2017/0100

BETWEEN:

MELVIN PIERRE MARQUIS

Claimant

and

**MARY PIERRE MARQUIS
THERESA FLAVIUS**

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Veronica Barnard of Counsel for the Claimant

Mrs. Lydia Faisal of Counsel for the Defendants

2018: June 6;
: July 13, 18;
2019: October 25.

JUDGMENT

[1] **CENAC-PHULGENCE J:** This is a claim concerning ownership of a dwelling house built on land situate at Fond Chic, Desruisseaux ("the disputed house"). The claimant, Melvin Pierre Marquis ("Melvin") claims against the defendants, Mary Pierre Marquis (nee Flaviux) ("Mary") and Theresa Flavius ("Theresa"), his former wife and mother-in-law respectively, a declaration that he is entitled to a one-half share of the disputed house in their possession, which they hold on trust for him; that a licensed quantity surveyor be appointed to value the disputed house; that they pay him the value of his one-half share; alternatively that they

give up possession of the disputed house or pay him the sum of EC\$149,430.00, being his contribution towards construction thereof, together with interest thereon.

- [2] Briefly, it is Melvin's case that he and Mary built the disputed house as their vacation home in Saint Lucia, with the intention at the time of construction that they would own it in equal shares. With this intention in mind, he contributed certain sums of money towards construction. The disputed house was built on Mary's family land, occupied by parents, with their permission, and on the understanding that the parcel of land on which it was built would be transferred to him and Mary. Melvin says he subsequently discovered, and it is undisputed that neither Mary nor Theresa are owners or have title to the land on which the disputed house is built. Mary and Theresa deny there was ever any such intention or that Melvin was in any way involved in construction of the disputed house. Their case is that the disputed house was built by Theresa and her husband with their own funds for their own use and benefit. Monies sent by Melvin to Mary and Theresa's bank account were repayment of a loan to him from Theresa's husband.

Issues

- [3] The following issues have been identified for determination:
- i. Whether Melvin has proven on a balance of probabilities, that he is owner entitled to a one-half share in the disputed house which Mary and Theresa hold on trust for him, and consequently entitled to payment of the value of his interest?
 - ii. Alternatively, whether Mary and Theresa are liable to repay Melvin the sum of EC\$149,430.00, which he alleges he paid to them toward construction, with interest?
- [4] It is accepted that the resolution of both issues involves a determination, on the evidence, of the intention of the parties as to ownership at the time of construction and whether on a balance of probabilities Melvin paid such sums of money as may be found to have been paid toward construction of the disputed house.

The Evidence
Evidence in Chief

Melvin

- [5] Melvin's evidence is that he and Mary were married on 5th August 2006 in Canada and obtained a decree absolute on 8th August 2016 from the Superior Court of Justice in Ontario Canada. He says the Minutes of Settlement in those proceedings, which the court accepted as the final order on ancillary relief, did not address property in Saint Lucia and permitted him to pursue any claim or remedy available to him with regard to any such property.
- [6] Melvin says that during their marriage, he and Mary agreed to build their vacation home in Saint Lucia. He therefore gave instructions to a Mr. Ivan Henry to prepare construction drawings for the house, which was to be built on a plot of land located at Fond Chic, Desruisseaux. He was of the understanding, from what he had been told by Mary and her parents, that this plot formed part of a larger parcel of land that her parents occupied. Her parents told him directly and he was convinced that the land belonged to them. Her parents gave them permission to build their house on the land and told him it would be transferred to Mary and himself. Mary had indicated that she wanted to be close to her parents and siblings and he agreed to build the house there, as they were all family. He says there was never any discussion about building their home at Black Bay. He relied on what he was told and made the decision to go ahead and put his money into constructing the house.
- [7] He says he later found out that the land on which the disputed house was built does not belong to Mary's parents but is her father's family land. He exhibited copies of the land register which show land registered as Block and Parcel No. 1225B 29 in the name of the Heirs of Clavier Anaise c/o Theresa Wilson and Block and Parcel No. 1225B 42 in the name of the Heirs of Theophile Henry Jn Baptiste c/o Theresa Wilson. The disputed house is on Parcel No. 29.

- [8] At the time, Melvin says he was gainfully employed in the construction business in Canada. As it was necessary to get money to Saint Lucia for materials and labour, Mary encouraged him, and he agreed to transfer money to First Caribbean International Bank account no. 106399331 of which Mary was the principal holder and to which her mother had access ("the FCIB account"). He says that Mary also discussed with him appointing her mother as their lawful attorney in Saint Lucia to make it easier to transact business on their behalf. He says he agreed and did so by Power of Attorney dated 6th September 2005. He says that when the lawyer's office called them to attend to sign the Power of Attorney, Mary told him to go and sign since he did not have much time left in Saint Lucia as he was due to return to Canada. He says she said that she and her mother would attend to sign after. He did so and left her to take care of it. He says Theresa acted on the Power of Attorney and withdrew money from his account at Scotiabank. He says it was revoked by him by Deed of Revocation dated 29th April 2014. He says he is aware Mary has made allegations that the Power of Attorney was a fraudulent transaction created by him to support his claim to an interest in the house. He denies this.
- [9] Melvin says that, through Theresa acting as his lawful agent, they obtained a costing for construction of the house in the sum of EC\$400,000.00 from a Mr. Gregory Ashdale. He says he provided money for the construction over the period 20th September 2007 to June 2008. He says he paid the sum of EC\$40,000.00 directly to the project and sent money to Theresa from Canada via Western Union as well as direct transfers to the FCIB account totaling the sum of CAD\$41,451.00. He says Theresa received the money and used it towards the purchase of materials and labour.
- [10] The transaction records exhibited by Melvin which are legible show the following:
- Transfers via Western Union and MoneyGram from Melvin Pierre Marquis to Theresa Flavius**
- | | | |
|------------|---------------|---------------|
| 29/10/2007 | CAD\$2,000.00 | Western Union |
| 06/12/2007 | CAD\$1,930.00 | Western Union |

20/12/2007	CAD\$1,930.00	Western Union
08/07/2008	CAD\$1,000.00	Western Union
14/10/2008	CAD\$ 300.00	Western Union
28/06/2009	CAD\$ 870.00	Money Gram

*The records show that on 11/10/2008, Melvin sent the sum of CAD\$422.64 which was received by a Brian Khadoo. No explanation has been provided as to whom this person is.

Bank Wire Transfers to the FCIB account in the name of Mary Flaviux or Theresa Flavius from Melvin Pierre Marquis

20/09/2007	CAD\$7,000.00
26/09/2007	CAD\$8,000.00
02/11/2007	CAD\$3,000.00
21/11/2007	CAD\$3,000.00
15/01/2008	CAD\$2,300.00
07/02/2008	CAD\$1,600.00
08/04/2008	CAD\$2,050.00
25/04/2008	CAD\$2,000.00

[11] From the evidence presented by Melvin, the total of the sums sent by Western Union, MoneyGram and by bank wire transfer to Mary and her mother's FCIB account is the sum of **CAD\$36,980.00** (EC\$76,178.88).

[12] Melvin says it was always his and Mary's intention that the house was their property, owned by them in equal shares and it is with this in mind that he made the direct investment of EC\$149,430.00 in the house. He says Mary even wrote to him sending photographs so he could see the progress of the house. After it was completed, he says he furnished it with a locally made bedroom set, which he would not have done if the house were not his. He says he had his own keys to the house and he and Mary stayed there whenever they were in Saint Lucia. He

says when he visited Saint Lucia in 2008 for his father's funeral, he stayed there; also in 2009 when his mother passed away, they stayed there together; in 2010 when Mary's father passed away, they stayed there together; and in 2012, when he came to Saint Lucia for his brother's funeral, he stayed there also.

[13] He says it was only during the divorce proceedings that Mary for the first time indicated to him and the court in Canada that the disputed house belonged to her parents and refused to acknowledge that he had an equal interest with her in it. Prior to that, they both treated the disputed house as their own. He denies the allegations that the money he sent was to repay her father for a loan. He denies ever borrowing any money from her father.

[14] He says Mary and Theresa are in possession of the disputed house and he has been prevented from going there. He says he has spent a lot of his hard-earned money in building the disputed house which he cannot now enjoy. If it is that the money he sent was not used towards construction of the disputed house, then Mary and her mother or either of them have received and kept his money, which was not due to them and should be returned.

Mary Flaviux

[15] Mary's evidence is that the disputed house which Melvin claims is theirs does not belong to either of them. It belongs to her mother and is erected on her father's family land for which she has no title. She denies that she and Melvin ever constructed any dwelling house in Saint Lucia. She says she would never have agreed to construct her marital home on her father's family land for which she may never have obtained title, and right under her parent's nose. She says that as far as she knows her parents had no discussion with Melvin about the land as he alleges. They would not have done so without her knowledge or involvement. She says there are two houses on the land, both of which belong to her parents. The disputed house is a replacement for her parent's previous old wooden house.

- [16] Mary says she does not know Ivan Henry and was never involved in requesting drawings from him. She says that Melvin knew of her parent's plan to build a new house and suggested to her mother that he obtain a plan which they could both use, as she and Melvin had discussed building a house in Black Bay, Vieux Fort. Melvin asked Ivan Henry to prepare the plan and subsequently called from Canada and told her mother that it was completed at the cost \$3,000.00. He asked her mother to collect the plan and pay the cost which he would reimburse her. At this time, they were not yet married.
- [17] She alleges that the funds sent by Melvin to the FCIB account were not sent for any construction by him. It was sent to repay her father for a loan which Melvin caused her father to advance to him in the sum of EC\$80,000.00 without the benefit of a receipt. She says that Melvin knew that her father hardly used the bank and kept large sums of cash at home, including earnings from the family business, his redundancy payment and pension. She says Melvin took advantage of her elderly father's simple mind, illiteracy and trust by approaching him when he was alone and asking him for a loan without first discussing it with her; again, before they were even married. She says she knows her father assisted him because of her and because they would be getting married soon. She says that Melvin had told her father that the sum borrowed was needed to purchase property in Canada.
- [18] Mary says Melvin received the money in 2005 and returned it two years later in several instalments. He only returned it when her father told him it was needed to construct the disputed house which was being built without a bank loan. She says he transferred \$77,808.33 of the \$80,000.00 borrowed to her FCIB account and exhibits a print-out of the transaction history covering the period 2007 to 2009, which confirms that Melvin indeed transferred EC\$77,808.33 to the account. She further says that her mother informed her, and she believes he also sent the \$3,000.00 to repay her for the construction plan via Western Union.

[19] She says further that her mother was not close to Melvin and only dealt with him because they were in a relationship and planning to get married. Her mother never conducted any transaction on his behalf and never required any Power of Attorney from him. She says though the Power of Attorney purports to have been executed in 2005, neither she nor her mother knew of its existence until during the divorce in 2013, when a draft was discovered showing what was intended to be her signature. She later searched the Land Registry and found a Power of Attorney in the same terms as the draft. She says on 19th May 2014 she took a copy of the registered Power of Attorney to the Criminal Investigations Department (CID) where she lodged a report indicating that she had never seen or signed it, knew nothing about it and that it was an instrument of fraud. She was required to give a statement to facilitate investigations but had to travel back to England for work. She made arrangements to provide the written statement in December 2014 when she returned, which she did on 17th December 2014. However, she says that between the date of her initial report and her return in December 2014, Melvin had caused the Power of Attorney to be revoked, again without her involvement.

[20] Mary says it was her mother, in her personal capacity and for her own benefit, who obtained an estimate from Mr. Ashdale based on the construction plan she obtained from Melvin. At no time in doing so did she represent Melvin. She says her mother has never been unemployed since her return from England. She operates her rum shop/dance hall and farm which yield sufficient income. She also has the proceeds of sale from property sold, receives a small pension benefit, and is due to receive a widow's pension. Further Mary and her siblings send her remittances regularly. In fact, she says she and her two sisters contributed significantly to the construction and furnishing of the disputed house, which is where they stay when in Saint Lucia. They pooled their resources and contributed the sum of \$82,345.34 towards construction via wire transfer to the FCIB account. She and her sisters also sent items of furniture and appliances.

- [21] In relation to the letter and pictures of the progress of the disputed house she sent to Melvin, Mary says that he requested her to do so. He led her to believe that he needed the letter and photographs to obtain a loan to purchase property in Canada. He now pretends that she sent him the letter and pictures of her own volition when she was only doing as he instructed. She says there would have been no need, as she spoke to him regularly on the phone, and email and instant telephone messaging were available to them. She was never accustomed to writing letters to him. She now knows this was part of his scheme.
- [22] She says Melvin never had keys to the disputed house nor has he ever spent a single night there. She says they have spent time in her parents' old house; however, they would usually stay at his mother's house in DeMally when they visited Saint Lucia. Further, between May 2007 and January 2010, the disputed house was not in use since construction was ongoing. Tiling and other finishing work was completed in January 2010 and that was when her parents moved in. Cracks were later discovered in the wall and her mother was advised that further work needed to be done including installing more beams and pillars. This was completed by a Mr. Ruffus Wilson, without any involvement from Melvin.
- [23] She says Melvin never purchased furniture of any kind for the disputed house at any time. The furniture was provided by her and her sisters, some of which was shipped from England and some purchased locally. She says Melvin never contributed the sum of \$40,000.00 directly to construction. The sums he sent were to repay the loan from her father and to reimburse her mother for the cost of the construction plan. She and Melvin never had any common intention or otherwise to claim a house that was not theirs. Their intention to build their home in Black Bay fell apart when their relationship began to deteriorate in March 2008.
- [24] She says that once in March or April 2014 while she and their son were staying at the disputed house and while the divorce proceedings were ongoing, Melvin came to the house demanding to see his son. He was denied entry and created a

scene, causing her to obtain a protection order from the family court. He did not, at this time, make any claim to the house. Mary says that Melvin only began to assert ownership of the house during the divorce. Mary is of the view that Melvin initiated this claim after the divorce as an act of revenge. She says her mother and father lived peacefully in the house until August 2010 when her father died, and her mother continued in the same manner until Melvin filed this claim in 2017. She questions why, if the disputed house was his, Melvin would wait more than seven years to make this claim. She says he has suffered no loss and the entire claim is a sham. She asks the Court to dismiss the claim.

Theresa

- [25] Theresa confirms much of Mary's evidence. She confirmed the businesses she operates and the source of her financial resources.
- [26] Theresa gave evidence that her husband, one evening in 2005 on her return home from her farm, told her that Melvin had asked to borrow the sum of EC\$80,000.00 which he lent him in cash. It was well known amongst the family that her husband did not use the bank and kept large amounts of cash at home. She was upset that he did not speak to her first and they quarreled.
- [27] She also says that Melvin had expressed an intention to build a home in Black Bay for himself and Mary. She confirms that Melvin was aware of her and her husband's plan to replace their single level wooden house with a concrete house on pillars. Knowing this, Melvin offered to get a plan they could both use for their respective houses. He asked her to pay the cost and promised to refund her, which he did.
- [28] She says that she gave the plan to a Mr. Gregory Ashdale who prepared a breakdown of the cost of construction and labour for the top floor, which totaled EC\$90,000.00. She says construction of the disputed house began in 2007 without an approved plan as neither she nor her husband owned the land. Mr.

Ashdale undertook construction of the upper floor from the pillars to the roof and she paid him the \$90,000.00. Although Mr. Ashdale completed his work much earlier, the upper floor was not completed until January 2010 as Mr. Ashdale's work did not include tiling, closets and cupboards, which took some time. In or about 2015, Theresa says she noticed large cracks in the walls. She was informed that there were insufficient beams to support the upper floor and urgent work was required to add beams, otherwise the house could collapse. At that time, she moved back into the old house for fear for her safety. She says she hired Mr. Ruffus Wilson to build the additional pillars and beams. He began the work in 2015 at the cost of \$60,000.00 and she paid him that sum in full.

- [29] She confirms that the sums Melvin sent to the FCIB was to repay the loan from her husband. She says Melvin preferred to repay the loan via sending the money through the bank. She says her husband asked that it be sent to the FCIB account, since she was the one who would be receiving it to pay for materials and labour for construction.
- [30] She says also that she never had a Power of Attorney from Melvin and never knew about any Power of Attorney. She did not even understand the term Power of Attorney until it was explained to her by her attorney in this matter, and would not have accepted one because of her inability to read and write.
- [31] She says that Melvin never had any plan to build on her husband's family land. Neither she nor her husband would have allowed for this as it would have taken the best part of the land from them as it is flat, and would have been built directly in their midst.
- [32] She confirms that her three daughters provided her with a large sum of money to assist with construction in 2007 and that most of the furniture and appliances in her home were sent by them from England. She says that in construction of the house she spent \$93,734.22 in 2007; \$8,597.15 in 2008 and \$3,805.00 in 2009.

In addition, she spent \$90,000.00 on labour. She further spent \$22,457.88 in 2015; \$18,361.70 in 2016 and \$11,757.73 in 2017 on material for work to the ground floor which is still not complete and installation of the additional beams and pillars. She also paid \$60,000 in cash to Mr. Ruffus Wilson in respect of his additional work with the pillars and beams. She provides numerous receipts in respect of these sums.

- [33] She denies that Melvin has any interest in the disputed house which is her house. She has occupied it since January 2010 without disturbance from him. He has never confronted her or raised the issue of ownership or possession with her personally or directly or by letter from his attorney. He has waited seven years and one month after she began living in her house to make this claim. She heard of his ownership story for the first time in 2013 or 2014 during the divorce. She asks the court to dismiss the claim because it is a false claim.

Linda Flavius

- [34] Linda Flavius ("Linda") is one of Mary's sisters and Theresa's daughter who gave evidence on their behalf. She confirms that she and her sisters gathered in pound sterling the equivalent of the sum of EC\$82,345.34, which they sent to their mother in 2007 to assist with construction of the disputed house which is the family home. She also lists various items of furniture and appliances which she purchased and shipped from the UK to her mother for the disputed house including: a gas cooker, a fridge/freezer, a washing machine, a toaster, a kettle, a microwave oven, a Samsung television set, a wardrobe, 2 chests of drawers, a TV bench, and a barrel of groceries and other small household items. She provided receipts for purchase and the bill of lading in respect of shipping of these items. She says she and her sisters also sent money to their mother regularly via Western Union and MoneyGram which contributed significantly to the construction of the house, although she cannot now produce these receipts.

- [35] She says she has never seen any item of furniture or appliance in the disputed house purchased by Melvin. As far as she is aware, the disputed house was built by her parents for their use. Further, although she was not there when her father lent Melvin the \$80,000.00, she says it was a well-known issue in their family.

Gregory Ashdale

- [36] Gregory Ashdale ("Mr. Ashdale") is a building contractor who gave evidence on behalf of the defendants. He says he knew Theresa's husband and it was he who approached him to build the disputed house. He confirmed that he agreed with Theresa and her husband to build the disputed house from the pillars to the roof for the sum of \$90,000.00 but this cost did not include tiling, cupboards, and closets. He confirms that he received the \$90,000.00 by way of installments of \$5,000.00 every week and a final installment of \$10,000.00 at once. He said apart from Theresa and her husband no one else ever gave him instructions and no one else paid him. No one else came to look at his work during his working hours or has ever told him the house belongs to them. As he understood, he was building the disputed house for Theresa and her husband. He confirms that additional beams were required after he had completed the house, which involved more labour and materials and was necessary to make the house fully safe. However, since the price paid to him did not include the additional cost, he did not undertake that work.

Evidence at Trial

Melvin

- [37] At trial permission was given to amplify Melvin's evidence. He stated that construction was commenced in about 2006 and completed in 2008 or 2009. In cross examination however, it was pointed out to him that the earliest receipt in relation to construction was dated April 2007. He stated that he had no receipts that predated April 2007, no receipts in his name and that all the receipts were in Theresa's name. He was pointed to numerous receipts spanning the period April 2007 to September 2007 pertaining to construction and then to the fact that he first

sent money to the FCIB account on 26th September 2007. He stated that he was not aware that construction of the house had started some five months prior to the first sum sent by him, allegedly towards construction of his house. He agreed that he sent \$77,808.33 to the FCIB account which he also agreed was less than one quarter of the \$400,000.00 that it was estimated to cost to build the house, according to Mr. Ashdale's estimate. He accepted that the monies sent by him were sent between 26th September 2007 and 30th April 2008, though he insists he also sent cash.

[38] It was apparent in cross-examination that Melvin did not know whether approval had been obtained to build the house. He said this was for his mother in law to take care of for him. He did not know whether the construction of the house had gone on illegally. He stated that he was not aware that Mr. Ashdale was paid the sum of \$90,000.00 for labour. He stated that he was not aware that the house had huge cracks in it after it was completed. He also stated that tiling was completed prior to 2009 until he was shown receipts for tiling dated 2009, at which point he agreed that tiling was ongoing in 2009. Despite being shown receipts in respect of work continuing on the house in 2008 and 2009, when it was put to him that work continued up to January 2010, he insisted that he lived in the house in 2008 and 2009. He agreed that though work on the house continued up to 2017, his last alleged payment towards construction was made in 2008.

[39] He accepted that the owner of a house, whether or not they have given a Power of Attorney, usually purchases something personal for their house but that there is no document evidencing that he purchased one single thing for the house. He accepted that Theresa's daughters placed evidence before the Court of all the purchases they made. He insisted that he purchased one bedroom set, though he admitted he had no evidence of this. He further accepted that purchasing one bedroom set is not furnishing the house, though he insisted it is part of it. He agreed that despite being a construction worker and travelling to Saint Lucia frequently, he never stated that he went to the site to do anything or that he

worked on the house. It was put to him that the top floor of the house was completed in January 2010 yet he did nothing at that time to claim his alleged house. He disagreed on the basis that he and Mary stayed there when they came for Mary's father's funeral.

- [40] He insisted that when he signed the Power of Attorney on 6th September 2005, Mary was not present, and he alone presented himself to the Notary to sign on that day. He agreed that his witness statement contained no details of the transaction he says Theresa conducted on his behalf using the Power of Attorney; not the sum, the date, or the purpose. When it was pointed out to him the obvious difference between the signatures on Mary's witness statement compared with the Power of Attorney, he stated that he was not very familiar with her signature. He said the signature on the witness statement looks like her signature while they were married but in relation to her purported signature on the Power of Attorney, his response was he does not know what her signature looked like before marriage. He stated that after he signed the Power of Attorney and returned to Canada, he knew nothing else about it.

Theresa

- [41] In cross examination, Theresa could not remember how long it took Mr. Ashdale to build the top floor of the disputed house, but she maintained that Melvin did not pay for the counter tops, tiles, washroom or vanities. She admitted that there is a house belonging to Linda on the land, some distance from her old house and about the same distance from her old house as is the disputed house. She also admitted that her husband had left no paper/document evidencing the alleged loan to Melvin but stated this was because he could not read or write.
- [42] She recalled that Melvin and Mary had purchased a small wooden house together at Lady Mico Street in Micoud and insisted that she had collected the rent in respect of that house twice only. She agreed that she had put the money in an account at Scotiabank, for which she had the bank book. She agreed that she used the Power of Attorney to deposit the money into the account; however, when

asked on re-examination whether she understood what a Power of Attorney is, she responded that she did not.

Mary

- [43] Mary maintained that Melvin was not involved in tiling the house and did not provide kitchen counters or install counter tops. She stated that Linda's house was built long before the disputed house and that she did not know whether Linda had sent money to her mother to build her (Linda's) house. She denied that keys to the disputed house were handed to her. She maintained the keys were handed to her mother. She admitted that she was told first by her mother and then sometime after by her father that he had lent the money to Melvin. She admitted that she had no document evidencing the loan because her father could not read or write.

Linda

- [44] Linda agreed on cross examination that the receipts exhibited by her evidencing regular remittances sent to her mother refer to the period 2016 to 2017. She maintained that the disputed house was completed in 2010 and denied that the items sent by her were sent to furnish her house, which was built prior to the disputed house. She stated that her house could not accommodate these items of furniture and that she did not send money to her mother to build her house.

Mr. Ashdale

- [45] Mr. Ashdale stated that he started building the disputed house in 2007 and took about three to four months to complete it. He said gave the keys to Theresa when it was finished and maintained it was she who paid him. He never saw nor knew Melvin or Mary.

Analysis

The intention of the parties as to ownership and whether sums paid by Melvin to Mary and Theresa were so paid toward construction of the disputed house?

- [46] I find that this is the relevant starting point as if Melvin fails to prove intention to build the disputed house as owner and that the sums paid by him were paid as his contribution toward construction of the disputed house in fulfillment of that intention, both claims must fail. A positive finding in this regard is the only basis upon which he can be awarded either of the reliefs he seeks.
- [47] In respect of the allegation of the loan to Melvin from Mary's father, there is no documentary evidence in support of this. All there is before the Court is the conflicting allegations of the parties. I find it quite believable that Mary's father used the bank infrequently and preferred to keep his savings at home. This is not uncommon among older folk in our society. He may, therefore, very well have had \$80,000.00 cash at home. Further I accept the defendants' evidence as to the extent of Theresa and her husband's financial resources. I accept, in the circumstances that her father was illiterate and that the alleged loan was to a soon-to-be family member, a receipt may not have been obtained. Unfortunately, Mary's father is now deceased and no one else was present at the time the alleged loan was given. The defendants' evidence of the loan is based on what they were told by the deceased.
- [48] Counsel for the defendants, Mrs. Lydia Faisal ("Mrs. Faisal") took issue with Melvin's bare denial of borrowing the money and that he has not indicated why, in his view, the defendants would conjure or fabricate such a serious allegation against him. However, it is not for Melvin to do so. His only burden is to prove his case. It is the defendants who allege the loan, so it is for them to prove it. Mrs. Faisal also submitted that that there is no documentary evidence of the loan does not prevent the Court from making a finding on it. She relies on Article 1163(5) of the **Civil Code** which permits proof by testimony in the case of "*an obligation arising from... all other cases in which proof in writing cannot be procured.*" She

also relied on the case of **Prebble v Costa**¹ in which the existence of a loan was alleged in the absence of contemporaneous documentation in support. The Court of Appeal considered that the trial judge was right to have considered all the evidence including his assessment of the witnesses and to come to the conclusion that there was in fact a loan liable to be repaid. The distinction between that case and the present is that both the alleged lender and borrower gave their respective evidence before the Court. In the present case, all the defendants' witnesses were informed about the loan by the deceased after the fact and this evidence is therefore hearsay. The Court is therefore not in a position to make a finding in this regard.

[49] However, it is noteworthy that the sum sent by Melvin to the FCIB account is accepted by all parties to be \$77,808.33, which is interestingly, very close to the sum alleged to have been borrowed. The timing that this sum was sent is also remarkable. It was sent in installments between September 2007 and April 2008. It was sent five months after construction began and is therefore unlikely to have been referable to Melvin sending money for material and labour for construction of his home as he alleges, without more. Some explanation would be necessary as to why, if the house was his, Melvin did not send the money at or prior to the start of construction.

[50] Alternatively, there ought to have been some explanation as to why Theresa and her husband would have funded construction of his house using their own money in the sum of some \$82,021.73 prior to him sending the first installment in September 2007. In fact, accepting the receipts which show construction began as early as April 2007 and Mr. Ashdale's evidence that he took about 4 months to complete the top floor, Melvin's first alleged contribution towards construction in September 2007 via the FCIB account would have come after Mr. Ashdale completed his work building the top floor. The timing is more consonant with the evidence of the defendants that Melvin was asked to return the money borrowed

¹ [2010] ECWA Civ 717.

because it was needed for the construction by Mary's parents which was being undertaken without a loan. The inference being that her parents would have started construction using other income/savings, and thereafter required those additional funds to continue and/or complete construction. Even if one considers the monies sent via Western Union and Money Gram, the earliest sum was sent in July 2007 in the sum of CAD\$1,000.00 and that was after construction started. I would think that CAD\$1,000.00 was a drop in the bucket given even the initial cost associated with the construction of the house.

[51] It is also peculiar that Melvin knew very little about what was going on in relation to construction, including the associated costs, the progress, or the issues which arose e.g. the cracks. Even though he was not physically present in Saint Lucia, one would have expected more involvement both monetarily and from the perspective of supervision and decision-making, if the disputed house was truly his. He ought to have known of the sums spent, especially such a significant sum as the \$90,000.00 paid to Mr. Ashdale for labour for the initial building.

[52] It is curious that he was not aware of the very substantial and serious defects with the house, being the insufficient beams and pillars, which threatened the entire foundation, and which was likely to result in its collapse. Further, the evidence discloses that construction and furnishing continued up until 2010 and remedial and other work up to 2017, which evidence I accept. Yet Melvin did not seem aware of any of this. This is the case even though he claimed to have stayed at the house on four occasions between 2008 and 2010. Further his financial contribution via wire transfer to the FCIB account ended in April 2008 and was limited to almost the exact sum alleged to have been borrowed and a far cry from the actual cost of construction.

[53] I have not neglected to take into account the sums sent by Melvin by Western Union and MoneyGram on five occasions between October 2007 and June 2009 totaling CAD\$6,100.00 (approximately EC\$16,470.00). Counsel for the

defendants takes issue with the evidence in relation to the sums sent by MoneyGram on the basis that these sums (as opposed to those sent via Western Union) were not pleaded, therefore the receipts in respect thereof are inadmissible. I do not accept this submission. The requirement is that pleadings must state the nature of the case to let the other side know the case it has to meet and provide the particulars necessary for that purpose. However, Barrow J.A. in the Court of Appeal case of **Eastern Caribbean Flour Mills v Ormiston**² made clear that there is no longer a need for extensive pleadings with an extensive amount of particulars, because witness statements are intended to serve the requirement of providing details or particulars of the pleader's case. On this basis, the MoneyGram receipts (so far as they are legible) are admissible evidence which I take into account.

[54] However, I find that these sums are insignificant when compared to the costs that were actually expended for construction of the house. In fact, the defendants point out that the total of all sums sent by Melvin amount to less than one quarter of the original cost to build the house, not including the remedial work undertaken. Further from this sum I must discount the EC\$3,000.00 reimbursement for the cost of the construction plan, which all parties agree Melvin repaid. I find that Melvin's contribution could hardly be considered the contribution of a person claiming to have built the house for himself and his immediate family as owner. Melvin also alleged that he paid the sum of EC\$40,000.00 directly to construction, however this is a bald assertion unsupported by evidence. As counsel for the defendants points out, he does not state to whom this alleged sum was paid or on what it was spent.

[55] There is further not one iota of evidence of anything else done or contributed by Melvin towards construction or furnishing of the house. There is not one single receipt for anything purchased in his name. As a construction worker himself, he has not alleged any acts of supervision, decisions made by him, instructions given

² Civil Appeal No12/2006 (St Vincent and the Grenadines, delivered 16th July 2007).

or the like. One would have expected with his construction background that he would have wanted to keep a watchful eye on 'his' building project. Mr. Ashdale, the builder maintained under cross examination that he did not even know Melvin, which is peculiar if Melvin was really the owner.

[56] Equally significant is that there is no evidence of any acts of ownership by him at any time thereafter. He does not explain how his mother and father-in-law came to be living in his home from the date it was completed in 2010 to present. He did not know that other persons had lived there (there was an allegation arising for the first time on cross examination that Mary's brother had lived and died in the house, which line of questioning was not objected to). Melvin can only rely on four visits to Saint Lucia to attend the funeral of family members when he alleges he stayed in the house, which does not to my mind evidence ownership and is in any event disputed by the defendants. He claims to have had keys to the house but there is no evidence of this. There is no evidence of personal items in the house belonging to him or placed there by him, save the one bedroom set of which he has provided no evidence and which the defendants dispute. This is in stark contrast to the abundance of evidence placed before the Court by the defendants, including receipts in Theresa's name in respect of material and labour for construction over the period April 2007 up to 2017, and by Linda in respect of furniture and appliances, which she says she purchased for the house.

[57] On behalf of Melvin, it was sought to suggest that the money and the appliances sent by Linda was for her house and not for the disputed house as alleged. However, there is no evidence to support this and it was unhesitatingly denied by Linda and the defendants. Melvin also sought to discredit Mary's evidence that she did not and would not have built her martial home in such close proximity to her parent's home and on land for which she does not have and may never obtain title. It was put to Theresa in cross examination that Linda's home is built equal distance from her parent's old house as the disputed house is from the old house on the family land for which she too does not have title. However, I am not

persuaded that this is of any relevance. That Linda did not mind building her home in those circumstances does not mean that Mary would be of the same mind. Mary was very adamant that the location of the disputed house would never have been her choice of location for her marital home and I believe her.

[58] There is however, the question of how the construction plan should be regarded. That construction plan states the client as 'Mr. and Mrs. Pierre Marquis', and the project name and address as 'residential home at Fond Chic, Desruisseaux', and is dated September 2005. Counsel for the defendants, Mrs. Faisal points out that the plan contains several errors including 'Mr. and Mrs. Pierre Marquis' when at that date Mary and Melvin were not yet married and on one of the pages, it states the client as one 'Peter Jn Baptiste'. I do not place much emphasis on these two errors. The name 'Peter Jn Baptiste' must clearly be a typographical error and at September 2005, Mary and Melvin were engaged and soon to be married.

[59] As to the intended project address, all the parties' evidence is that Melvin is the one who gave instructions for the plan to be drawn. Those instructions would tend to suggest that he intended to build at Fond Chic, Desruisseaux. However, Mary's evidence is that she and Melvin discussed building their own home in Black Bay and that Melvin had been aware of Theresa and her husband's plan to build a newer home on the family land for themselves. He offered to obtain a construction plan which they would both use and this was the circumstance in which he instructed Mr. Ivan Henry to prepare this plan. Counsel for the defendants, Mrs. Faisal submits that given the errors on the plan and that there is no explanation as to why that information was inserted on the plan and that the maker of the plan has not been called to give evidence, it is hearsay and unreliable for the truth of its contents. Having assessed the evidence and the witnesses, I believe that Melvin may have given instructions for the plan to be drawn but I accept that it was a plan which was to be used by both him and Theresa which would be the reason the plan would have had Fond Chic, Desruisseaux. I accept Mary's evidence that she did not intend to build her family home at Fond Chic, Desruisseaux.

[60] Counsel for the defendants, Mrs. Faisal has invited the Court not to consider Melvin's evidence of the letter and pictures which Mary sent to Melvin. She says that evidence was not properly pleaded because it does not plead the content before claiming to rely on it. I do not agree. Melvin's pleadings at paragraph 11, before indicating that he would be relying on the letter, states: *"upon completion of the dwelling house, the first named defendant communicated in writing to the claimant advising of the stage of construction and sending photographs."* The letter and photographs have been sufficiently pleaded based on my observations of the law in relation to pleadings discussed above.

[61] I believe Mary's evidence that Melvin requested the letter and photographs, and she obliged. Mary says in the letter *"please find enclosed two copies of our house photos as requested. I made it my utmost best to see to – that you receive those photos as early as possible."* This communication is odd of a young couple in 2008, when as Mary points out, other more convenient forms of communication were available and used by them. Melvin has pointed to no history of similar communication between them. The language of the letter is strangely formal and seems more likely to have been contrived to convey a particular impression, possibly to obtain a loan from a bank as Mary alleges. I do not find that it was genuinely Mary updating Melvin on the progress of their home, especially in light of my analysis of all the other evidence.

[62] In relation to the Power of Attorney, I am more inclined to accept the evidence of the defendants. It is admitted by Melvin and undisputed that he alone appeared before the Notary Royal on 6th September 2005 and signed the Power of Attorney. This is so despite the fact that the Power of Attorney states that all three parties (Melvin, Mary and Theresa) appeared before the Notary and signed in his presence on that day. This is clearly false and in and of itself raises certain concerns about its authenticity, even if Melvin's evidence was to be accepted that Mary and Theresa did sign the Power of Attorney at some later date.

[63] However, Mary and Theresa maintained that they never signed any Power of Attorney and were unaware of it until during the divorce. I place significance on the report and subsequent statement made by Mary to the Criminal Investigations Department upon becoming aware of the alleged Power of Attorney, which would have been contemporaneous with the events as they unfolded. The statement exhibited is dated 17th December 2014 which is long before this claim was filed in 2017 and therefore is unlikely to be referable to merely supporting this claim. The statement itself supports the allegation that neither Mary nor Theresa signed the Power of Attorney. However, I make no finding as to the authenticity of the Power of Attorney as such a determination is not relevant to the resolution of the issues in this claim and in any event is not an issue which can be determined on this claim as that would have had to be the subject of separate proceedings.

[64] I do note the discrepancy that Mary's evidence in chief is that the Power of Attorney was revoked between the date of her initial complaint to the CID on 19th May 2014 and the date of her statement on 17th December 2014. However, the Power of Attorney was in fact revoked before the date of her initial complaint, by Deed of Revocation dated 29th April 2014. I do not however make much of this as prior to making her initial complaint to the CID, her evidence is that she made her attorney in Canada aware of her allegation that the Power of Attorney was an instrument of fraud, which could have prompted its revocation prior to her formal complaint to the CID.

[65] There is also the discrepancy by Theresa, where having stated she did not sign the Power of Attorney and was unaware of it until during the divorce and did not understand what a Power of Attorney was, she agreed under cross examination that she used the Power of Attorney to deposit money into a Scotiabank account, being rent collected in respect of property at Lady Mico Street, Micoud belonging to Melvin and Mary. I find that in this regard Theresa was quite confused during cross-examination. It does not appear that she really understood the issue of the

Power of Attorney. I find that this is plausible especially given her inability to read and write and therefore I place only minimal weight on this discrepancy.

[66] Further I have regard to the fact that a Power of Attorney is not required in order to deposit funds in another's account and so it is unlikely that she would have in fact used it in the circumstances and for the purpose put to her in cross examination. In his reply to defence, Melvin stated that the Power of Attorney was a mutual decision to facilitate quick and easy access to funds in his account at Scotia. He went on to allege that Theresa acted upon the Power of Attorney and used it to withdraw \$3,000.00 from his account on 17th December 2017 to pay construction workers. Though this allegation did not feature in his evidence, I take note of it and that it must be false as the Power of Attorney had already been revoked by him from April 2014. In the circumstances, Melvin has not satisfied me that there was business of the nature authorized by the Power of Attorney to be conducted on his behalf by Theresa or that it was ever actually used by her for any business whatsoever. He provided no evidence of any transactions in relation to his Scotia account or any others for that matter where Theresa had indeed used the Power of Attorney.

[67] For the sake of completeness, I address two issues raised in closing submissions. In her closing submissions, counsel for the claimant, Mrs. Veronica Barnard ("Mrs. Barnard") argued that Melvin would be entitled to compensation for his half share in the disputed house based on article 372 of the **Civil Code of Saint Lucia**³ ("the Civil Code"). Article 372 speaks to the circumstances where a person who is in possession of property is entitled to compensation for improvements made to that property. There is no allegation by Melvin that he ever entered into possession of the property. Article 372 to my mind is therefore not applicable in the context of these proceedings.

³ Cap 4.01 of the Revised Laws of Saint Lucia.

[68] Counsel for the defendants, Mrs. Faisal argued that Melvin's claim alluded to the commission of a delict or quasi delict, there being no allegation of any contractual obligations but alleged wrongdoing of a tortuous nature. She argued that by virtue of Article 2122 of the Code, claims in respect of delicts and quasi delicts are prescribed by 3 years. She submitted that Melvin's claim is therefore prescribed, as at the latest, his cause of action would have arisen on 24th April 2014, the date of the order of the Family Court preventing him from entering the disputed house. His claim was only filed on 15th February 2017 and served on 5th May 2017 on Mary and on 21st May 2017 on Theresa, more than three years after the cause arose.

[69] A delict is defined in the Code as an injurious act and is commonly accepted as analogous to a tort. The injurious act is a delict where there is injurious intention and a quasi delict where there is not.⁴ I do not agree that the claim for a declaration of ownership of land and for possession or the value in lieu thereof amounts to a claim for damages resulting from a delict or quasi delict so as to be caught by article 2122 of the Code. Article 2103A provides that "title to immovable property... or other right connected therewith, may be acquired by sole and undisturbed possession for 30 years, if that possession is established to the satisfaction of the Supreme Court." It has been established that this applies equally to negative prescription barring such a claim. This provision is therefore more applicable to a claim for ownership and possession of land than article 2122. Further, article 2103 provides that all things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by 30 years. I am of the view that a period of 30 years is the applicable prescriptive period and therefore this element of the claim is not prescribed.

Conclusion

[70] I find the defendants' evidence to be more credible than that of the claimant. Therefore, for all the reasons stated above, on a balance of probabilities, I find that

⁴ Article 1(15) of the Civil Code of Saint Lucia.

Melvin has not proven that the sums sent to the defendants were for construction of the house by him. The extent and timing of his financial contributions, his lack of knowledge of and involvement otherwise in construction and furnishing of the house, and his conduct thereafter do not lend to a finding of intention by him to construct the house as owner or that the sums he sent were his contribution toward construction of the disputed house. I therefore find that Melvin is not entitled to a one-half interest in the disputed house, or to repayment of the sums paid by him to Mary and Theresa's bank account.

Order

[71] In light of the foregoing, the order I make is as follows:

1. The claim is dismissed.
2. Prescribed costs on the claim to the defendants in accordance with CPR 65.5.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar