

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

**FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

CLAIM NO. SKBHCV2017/0325

BETWEEN:

FRANCIS CRAWFORD

Claimant

and

URELL HENRY

Defendant

Appearances:

Ms. Pauline Hendrickson for the Claimant

Ms. Marsha Henderson and Ms. Brittney Jeffers for the Defendant

2019: February 21

ORAL JUDGMENT

[1] **VENTOSE, J.:** The Claimant filed a Fixed Date Claim on 23 October 2017 seeking principally an order from the court that a parcel of Land at Paragon Heights in Saint Christopher owned by the Claimant and the Defendant as tenants in common be severed and partitioned in equal half shares between the Claimant and the Respondent pursuant to the Partition Act CAP 10:12 of the Laws of Saint Christopher and Nevis. Although this claim is for a partition of the property, it is really a claim in respect of the beneficial ownership of Land where legal title vests

equally between the parties. The Claimant cites the decision of Alleyne J in **Kydd v Williams** (Claim No. 23 of 2001 in Saint Vincent and the Grenadines dated 16 September 2002) for the view that the court can on a petition for partition of Land determine the underlying question of beneficial ownership of the Land. Having read the decision I am satisfied that the court has the power to so determine and the matter proceeded on that basis.

- [2] The Claimant avers that he and the Defendant were in a relationship for five years that ended in 1995 and that they have two children together. He also avers that he and the Defendant were a family, combined resources and provided for their family. The Claimant states that he and the Defendant had a joint bank account into which funds were deposited, and that sometime later they decided to purchase land in Saint Christopher as an investment for their retirement. The Claimant avers that on 24 March 1995 he paid a deposit of US\$6,000.00 for the purchase of a one-acre lot of Land (the “**Land**”) and paid the balance of US\$69,000.00 on or about 10 April 1995. On 21 April 1995, the Land was conveyed to the names of the Claimant and the Defendant and was registered by an Indenture of Conveyance recorded as a Deed No. 9356 in Liber N Volume at Folios 1094 to 1097 of the Register of Deeds for the Island of St. Christopher.
- [3] The Claimant avers that he and the Defendant used their joint funds to purchase the Land and when he came to Saint Christopher to purchase the Land, the Defendant had not yet received any of the settlement sums in respect of the death of her son. He also avers that he and the Defendant discussed the purchase and that the Defendant was always aware that the Land was conveyed to them both as tenants in common in equal shares. The Claimant states that the Defendant has taken no action in 23 years to claim the Land and has not shown any interest in the Land; that the Land has been vacant for 23 years; the Land is not being utilized for the purposes for which it was originally purchased; and that he wishes to use the Land for his retirement. As a result, he arranged for the Land to be surveyed and wishes it to be divided into two equal shares to enable him to use his portion of the Land.

- [4] At trial, the Claimant gave evidence that was diametrically opposed to that of the Defendant. He claimed that he did not receive any letter from the Defendant that contained any money to deliver to Mr. Cramer, the realtor located in Saint Christopher. His evidence was that he and the Defendant had a joint account from which he withdrew the money to pay the deposit on the Land. The Claimant stated that he showed the Defendant the receipt he received for the deposit on the Land and that the Defendant was aware at all times that the Land was in both of their names as tenants in common in equal shares. The Claimant testified that the Defendant has done nothing during the period of 23 years since the purchase to remove his name from the Land, that no documents have been filed in court and that the Land was purchased for both of them.
- [5] During cross-examination, the Claimant testified that when he moved to New York he was not working because he gave up his job to move there. He accepted that the Defendant was the only person in the household working at that time but stated that this was only for a short period as he found work soon thereafter. The Claimant also testified that there were at least two bank accounts, namely, one in Chase Manhattan Bank, and one in New Jersey but he could not remember the name of the second bank. He also stated that the monies he saved were paid into the joint account held by both himself and the Defendant. The Claimant could not remember how much he worked for during that period of time. The Claimant also denied that the Defendant gave him any money to take care of their first child when he came to Saint Christopher in 1995. Later in cross-examination, the Claimant remembered that he earned approximately US\$660.00 every fortnight and that he worked in that job for approximately 10 years. The Claimant also testified that he was aware that the Claimant received monies from the settlement in respect of the death of her son. The Claimant brought the cheque to the Defendant at the hospital on the birthday of their second child, and denied that the funds for the balance of the payment on the Land originated from the settlement sums received by the Defendant.

- [6] The Claimant during cross-examination also testified that he discussed giving the Land to the Claimant and that they were in discussions about a lot of matters. There were discussions about furniture but not about the Land. The Claimant testified that he did not remove his name on the Land as promised to the Defendant because the Defendant brought a successful action against him for \$150,000.00 in the High Court in Saint Christopher for appropriating her money. The Claimant also denied he was the Defendant's agent for the purchase of the Land.
- [7] The Defendant avers that she ended her relationship with the Claimant in June 1995 after she discovered the Claimant had deceived her in relation to the purchase of the Land. The Defendant also avers that she requested the Claimant to be her agent for the purchase of land in Frigate Bay in Saint Christopher. She states that she gave US\$3,000.00 to the Claimant to pay as a deposit on the Land together with a letter for the realtor. The Defendant also states that she paid the balance of the purchase price from funds she obtained from a court settlement in relation to the accidental death of her son.
- [8] The Defendant avers that it was understood between the Claimant and the Defendant that the Land was to be purchased solely for her use and benefit and it was to be used as an investment for her retirement. The Defendant also avers that contrary to her instructions, the Claimant arranged with the realtor to purchase another piece of land and subsequently had it registered in the names of the Claimant and the Defendant, as opposed to the sole name of the Defendant. The Defendant avers that she discovered this in June 1995 and immediately requested the Claimant to have this rectified by voluntarily removing his name. The Defendant also avers that she had not dealt expeditiously with this matter but it has always been clear that the Lands were to be owned solely by her.
- [9] At trial, the Defendant testified that she and the Claimant did not have any joint accounts, they did nothing together and that the Defendant did not have a job at the material time, and that he was able to find work after the death of her son in 1992. She testified that she does not know about any savings the Claimant claims

to have from his job in Florida. The Defendant stated that she gave the Claimant the letter for Mr. Cramer and in that sealed letter there was US\$3,000.00. The Defendant further stated that the Claimant returned to the United States of America but he did not provide her with any receipt for the said amount. She stated that the Claimant informed her that the balance of the purchase price for the Land was due within a short period of time. The Defendant went to the bank to procure a cheque for US\$69,000.00 for the balance of the purchase price, and that both she and the Defendant were at home when FedEx came to collect the cheque to send to Saint Christopher. The Defendant stated that when the Claimant left for Saint Christopher and paid the deposit she had already received the settlement sums from the lawyers. The Defendant continued that it was the Claimant who brought the cheque to her at the hospital, adding that it was for approximately \$380,000.00, although the total amount awarded was approximately US\$500,000.00.

[10] The Defendant was adamant that the Land was purchased with her money, that she had no joint bank account with the Claimant and that the money for the purchase of the Land came from her bank account. She also testified that the Claimant asked her to contribute to the education of his daughter, who was then at law school, and he would remove his name from the Land. The Claimant accompanied her to the bank to get the cheque and this was posted to St. Christopher for the transaction to be completed. The Defendant further testified that she asked the Claimant on many occasions for a report on the Land transaction but he was not forthcoming with the information. As a result of this she made an appointment to see Mr. Cramer in June 1995 and realised that the Land was conveyed in the joint names of the Claimant and the Defendant when she received a copy of the conveyance from the court office on her return to Saint Christopher.

[11] In cross-examination, the Defendant was unshaken in her statements that the Land was to be conveyed in her name alone and that she did not see the receipt for the deposit until the matter came to trial. She also testified that she got an

advance of her settlement sum from her lawyers of US\$8,000.00. The Defendant also stated that although the letter to Mr. Cramer was dated 4 March 1995, she wrote it before she received the cheque from her lawyers or the settlement. She further stated that she asked the Claimant for a report but none was forthcoming and insisted that the land which she intended to purchase was in Frigate Bay and not the Land that was actually purchased by the Claimant. The Claimant did not provide her with any of the Land documents as she requested, which explains why she made an appointment with Mr. Cramer to find out what had happened. The Defendant's evidence is that she was puzzled to find out that the Land purchased was not in Frigate Bay and was in the joint names of herself and the Claimant.

[12] In all the circumstances, I believe the version of events as explained by the Defendant. Her evidence was straightforward and believable. She was able to remember and provide a satisfactory explanation for the events that took place. The evidence of the Defendant was reliable and consistent throughout. I do not believe that the Defendant who had just received approximately \$400,000.00 would purchase property in the joint names of herself and the Claimant when she could have purchased it outright as she claims to have done. Moreover, there is no reason why the Defendant would have seen the conveyance for the first time when she retrieved a copy from the Land registry unless the Claimant kept her in the dark about the Land transaction. It was put to the Defendant that the intention was that she and the Claimant was to hold the Land as tenants in common, that the Claimant did deposit his monies into their joint account, that the Claimant contributed in equal shares to the purchase of the Land. I do not agree with any of these for the reasons explained above.

[13] The Claimant was not able to provide details of the events about which he spoke at trial, and his evidence did not appear to me to be reasonable. He could not provide a clear answer to how much money he made at the material time, or where the second bank account was located. I find that the Claimant was not being truthful when he stated that the monies were held in a joint bank account with the Defendant. The version of events as told by the Defendant is more

believable as I find that she was a truthful witness to what happened during that time. She stated that she was a first time purchaser and that can reasonably explain why she might not have known the details of the purchase of the Land, particularly when she states that the Claimant did not provide her with a report or give her any details of or the documentation for the Land transaction when she requested this of him. I also believe the Defendant that she attempted to find out what happened in respect of the purchase of the Land, and this reasonably explains why she made the appointment to see Mr. Cramer.

- [14] Consequently, I find that the Claimant paid US\$3,000.00 as part of the deposit for the Land and that was his only contribution. I also find that the Defendant paid US\$3,000.00 as part of the deposit for the Land and that the sum of US\$69,000.00 for the balance of the purchase price of the Land was paid solely by the Defendant from monies in her bank account, not any joint account as claimed by the Claimant. The Defendant is entitled 96 per cent of the beneficial ownership of the Land but must account to the Claimant for his share of ownership, valued at 4 per cent (US\$3,000.00/US\$75,000.00) and for the sum of EC\$6,507.53 the Claimant paid to the Inland Revenue Department on 6 March 2014 and for any other sums so paid, with supporting receipts.

Disposition

- [15] For the reasons explained above, I make the following orders:
- (1) The land at Paragon Heights recorded as a Deed No. 9356 in Liber N Volume 7 Folios 1094 in the Register of Deeds in the freehold estate situate at Lot No. 5 of Paragon Heights Development (the "**Land**") in the names of the Claimant and the Defendant as tenants in common in equal shares is held on trust for the Defendant as beneficial owner of 96 per cent and the Claimant 4 per cent.
 - (2) The Claimant is entitled as against the Defendant to be compensated for the value, at present market value, of 4 per cent of the Land.
 - (3) The Claimant is entitled to the repayments from the Defendant of the sum of EC\$6,507.53 paid to the Inland Revenue Department on 6 March 2014, and of any other sums paid to the Inland Revenue Department for which he can

provide the necessary receipts. All remaining invoices are to be provided to the Defendant for payment within 14 days of today's date and shall be paid by the Defendant within 14 days of receipt.

- (4) A licensed land surveyor, property valuer or certified land appraiser, to be agreed upon by the parties (Agreed Valuer), or failing agreement within 14 days of this order to be selected by the court (Approved Valuer), survey the Land and prepare a market valuation report of the Land.
- (5) Counsel for the parties shall jointly instruct in writing the Agreed Valuer the Approved Valuer within 7 days of agreement or 7 days of the order of the court naming the Approved Valuer.
- (6) Once the payments made in Paragraphs 2 and 3 have been made, the Claimant shall within 21 days of notice in writing from the Defendant cause the Land to be transferred in the sole name of Defendant. If the Claimant fails to comply with this order within the time period, the Registrar of Lands shall effect the transfer of the Land to the Defendant.
- (7) The parties are granted liberty to apply in respect of any matter arising out of this order.
- (8) The parties shall bear equally the costs of providing the valuation to be conducted by the valuer.
- (9) Prescribed costs are awarded to the Defendant in accordance with Part 65.5 of the CPR 2000.
- (10) The value of the claim shall be an amount as agreed between the parties, and failing agreement \$50,000.00 as stated in CPR 65.(5)(2)(b).

Eddy D. Ventose
High Court Judge

By the Court

Registrar