

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(CIVIL)**

CLAIM NO: ANUHCV 2009/0962

BETWEEN:

REYNALD CHARLES

Claimant

and

**THE ESTATE OF CHESLEY JOSEPH (DECEASED)
CYNTHIA ROSITA JOSEPH - THE ADMINISTRATRIX
OF THE ESTATE OF CHESLEY JOSEPH (DECEASED)**

Defendant

Appearances:

Ms. Maureen Hyman for the Claimant
Dr. David Dorsett for the Defendant

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2009: October 29
2010: April 16
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JUDGMENT

- [1] **MICHEL, J.:** The Claimant, Reynald Charles, filed a Fixed Date Claim and Statement of Claim on 19th May 2009 making various claims against the Estate of Chesley Joseph (Deceased) and Cynthia Rosita Joseph, the Administratrix of the Estate.
- [2] On 9th September 2009 the Defendant, Cynthia Rosita Joseph, as Administrator of the Estate of Chesley Joseph, Deceased, filed an application for an order requiring the Claimant to give security for the Defendant's costs of the proceedings. The application was supported by an affidavit by Ms. Joseph and was accompanied by a Draft Order. The Defendant also filed at the same time a Defence to the Claimant's claim.
- [3] The case came up in Chambers on 29th October 2009 whereupon Dr. Dorsett, on behalf of the Defendant, submitted that this is a proper case for an order that security for costs be provided by the Claimant and that there was no affidavit or other document filed refuting the Defendant's application.
- [4] Ms. Hyman, on behalf of the Claimant, submitted that the Claimant is a national of Antigua and Barbuda even though he does not now live in the country. She further submitted that the parcel of land which the Claimant owned together with the Deceased was held in joint tenancy and that at the death of the Deceased the Claimant became entitled to the land. She submitted that there was not therefore any need for security for costs.
- [5] Dr. Dorsett responded on behalf of the Defendant that, if there is a co proprietorship, the interest of the Deceased devolved upon his death to his Administrator.
- [6] The Court asked Counsel for both sides to make written submissions to the Court on the fate of the parcel of land which the Claimant owned together with the Deceased.
- [7] On 6th November 2009 Counsel for the Claimant filed a written submission in support of her contention that the property was held on a joint tenancy. She submitted that a joint

tenancy arises whenever land is conveyed to two or more persons without any words to show that they are to take distinct and separate shares and that unless there are words of severance a joint tenancy will arise. She also made reference to the four unities which must exist to give rise to a joint tenancy – unity of time, unity of title, unity of interest and unity of possession. She submitted that, in applying the legal principles enunciated, it was clear that a joint tenancy existed between the Claimant and the Deceased with respect to the aforesaid parcel of land and that, upon the death of the Deceased, the law of survivorship would come into operation and the Claimant would become the sole owner of the land.

- [8] On 10th November 2009 Counsel for the Defendant filed a written submission in which he quoted section 100 (1) of the Registered Land Act, Cap. 374 of the 1992 Revised Laws of Antigua and Barbuda which states: "When any land is conveyed, transferred, devised, or devolves to two or more persons in their own right, such persons shall be deemed and taken to be proprietors in common, unless expressly declared to be joint proprietors." Dr. Dorsett submitted that, in the instant case, there is no express declaration that the Claimant and the Deceased were joint proprietors and they are therefore, by virtue of section 100 (1), deemed to be proprietors in common.
- [9] Counsel for the Claimant then filed a further submission on 20th November 2009 contending that all of the requirements of section 100 of the Act and, in particular, the requirements of subsection (2) thereof, have not been met and so one has to look elsewhere for guidance. Counsel then suggested that one should (in effect) ignore the legislation and look to the common law for guidance on this issue, from which source one will arrive at the position that the parties are deemed to be joint tenants because they hold the land as co owners and there were no words of severance.
- [10] The Court however was not able to discover from the evidence adduced and did not consider it appropriate to independently research issues of fact, as to whether the parcel of land was "conveyed, transferred, devised, or devolve[d] to" the Claimant and the Deceased and whether the instrument by which they acquired it expressly declared them

to be joint proprietors. No evidence was adduced either as to the instrument by virtue of which the land was acquired and as to whether the instrument showed them to be joint proprietors or proprietors in common.

[11] The Court therefore is none the wiser in determining whether the Claimant and his deceased brother, Chesley Joseph, were joint tenants or tenants in common of the earlier-referred-to parcel of land and whether the Claimant is now the beneficiary of a jus accrescendi entitling him to claim the entire parcel of land.

[12] This being the case, the Court will determine the Defendant's application for security for costs without regard to the existence or non existence of a parcel of land which can secure an award of costs in favour of the Claimant.

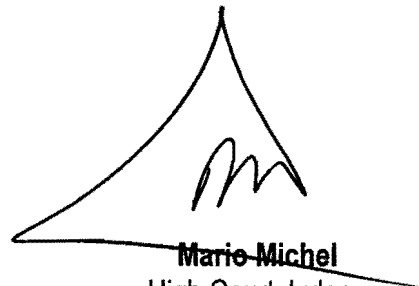
[13] The Court will exercise its discretion to make an order for security for costs because the Claimant does in fact reside out of the jurisdiction; he does reside in a territory that will not enforce our civil orders; he does make a claim for reimbursement of money expended by him which can lead him, if unsuccessful in his claim, to be disinclined to expend further moneys on this enterprise; he does lay claim to being a person of means and who should therefore have little difficulty in satisfying an order for giving a moderate amount of security for costs.

[14] The Court will exercise its discretion to order the giving of security for costs in the modest sum of EC\$10,000, which would more than suffice to cover the Defendant's costs if the Claimant were to abandon further proceedings after securing the costs, but which would not serve as a disincentive to the Claimant to pursue the claim if he believes in the merits of it.

[15] The Court's order is as follows:

1. The Claimant shall provide security for costs in the amount of \$10,000 within one month of the date of this order.

2. The security for costs shall be held in escrow in an interest-bearing account established at a reputable commercial bank in Antigua in the joint names of the legal practitioners for the Claimant and the Defendant.
3. Further proceedings in this matter are stayed until such time as the security for costs is provided for in accordance with the above-specified terms.
4. If security for costs is not provided in accordance with the terms specified herein within one month of date of the order, then the Claimant's claim will be struck out after the aforesaid month.
5. The cost of this application will be costs in the cause.



Mario Michel
High Court Judge