

ANTIGUA AND BARBUDA
THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2009/0208

BETWEEN:

PRISCILLA LEONCE nee JACKSON

Respondent/ Claimant

and

BERNARD LEONCE

Applicant /Defendant

Appearances :

Mr. Hugh Marshall Jr. for the
Mrs. Shahida Ali-Schneider for the

Claimant
Defendant

2009: July 20
2009: October 14

DECISION

1. The Applicant/Defendant Bernard Leonce applies to the Court for an order that clause 1 of the fixed date claim form of the claimant be struck out pursuant to Part 9.7 of the CPR 2000 and that clause 2 of the said Fixed Date Claim form be stayed until the determination of their application.
2. The grounds of the application are; (i) that clause 1 of the claimants claim relate to the granting of an order by the Court in Antigua and Barbuda over the land situated in the jurisdiction of St. Lucia; (ii) that the claimant wrongfully commenced the action by way of Fixed Date Claim form using an affidavit in support, instead of a statement of claim.

Family Proceedings – Part 2 (2)(3)

3. The Applicant/Defendant contends that part 8.1 (1) of the CPR 2000 requires the filing of an affidavit in support of a fixed date claim form only *“(c) if any rule or practice direction so*

requires an affidavit or other document." In the defendant's case, he contends that the Married Women's Property Act under which the Claimant brings her action, does not provide for the use of an affidavit to commence the proceeding or for any other purpose.

4. The Respondent/Claimant contends that CPR2000, Part 2 (2) (3), expressly disapplies the application of the CPR 2000 to "(a) *Family Proceedings*" and that proceedings under the Married Women's Property Act are *Family Proceedings*, therefore the aforementioned Part 8.1 (1) (c) *does not apply*. **I accept the Applicant/Defendant's position on this point.¹ That is; "It is our submission that the proceedings brought under the Married Women's Property Act are civil proceedings and that the CPR 2000 apply".**
5. The Defendant submits that the Married Women's Property Act, Chapter 267 of the Laws of Antigua and Barbuda is not an original piece of legislation, but one which was replicated from section 17 of the English Married Women's Property Act, 1882.
6. They submit further, that Halsbury's Laws of England, Fourth Edition, Volume 5 (3) paragraphs 205 and 205, defined and identified which proceedings are "family proceedings." These include:
 - a) *petitions for divorce, nullity and judicial separation,*
 - b) *application for orders on the ground that either party to the marriage has failed to provide reasonable maintenance for the applicant or for any child of the family,*
 - c) *applications for the alteration by the Court for a maintenance agreement during the lives of the parties or after the death of one party,*
 - d) *proceedings for financial provisions in connection with dissolution, nullity or separation,*
 - e) *proceedings for child safety orders,*
 - f) *proceedings to regulate the rights of occupation of a dwelling house in shared occupation to prevent the molestation of adults and children and to transfer tenancies,*
 - g) *proceedings for adoption orders and placement orders,*
 - h) *applications for financial relief,*
 - i) *applications to have a child treated as the child of the parties to a marriage in certain circumstances such as surrogacy, and*
 - j) *proceedings brought under the Children Act 1989".*

¹ The following submissions in support of the case for the defendant are a substantial reproduction of the submissions of counsel for the Defendant.

7. In the same manner; as proceedings under the English Act are not deemed family proceedings, proceedings commencing under the Married Women's Property Act of the Laws of Antigua cannot be considered family proceedings but rather civil proceedings which will be governed by the CPR 2000. Counsel for the defendant continues and submits that it is well settled that disputes relating to property between a husband and a wife are dealt with in the Civil Courts.
8. Counsel for the Defendant, Mrs. Ali-Schneider, submits further, that the Married Women's Property Act does not have any subsidiary rules which govern the procedure by which the Applicant would move the Court and the manner in which proceedings would be conducted. Indeed, she contends that "... *the Court must necessarily give effect to the intent and purpose of Part 2.2(3) ² of the Civil Procedure Rules 2000 which, they submit was intended to be applied where "family proceedings" are governed by their own rules. For example, divorce proceedings which are inherently "family proceedings" are governed by the Divorce Rules in our jurisdiction; adoption proceedings are also family proceedings and are governed by the Adoption Rules.*"
9. Mrs. Ali-Schneider further submits that in any event, the Claimant, having commenced its action under Parts 8.1(5) of the CPR 2000 by way of a Fixed Date Claim form, cannot at the same time deny that it is governed by the said CPR2000 and more specifically, for our purposes here, governed by the CPR2000 Parts 8.1(1)(c) and 8.3.

Part 8 (3) (2) – Order relating to foreign lands

10. The Defendant simply states that the Court in Antigua and Barbuda cannot make the order claimed in the claimants fixed date claim form i.e. "(1) *That it be adjudged and declared the Claimant and the Defendant own the property in St. Lucia being lots....*" The claim goes on to ask that it be found that the Claimant is; '*beneficially entitled to equal shares in the said property in St. Lucia*'.
11. The Applicant/Defendant relies on the plain words of the CPR2000 at Part 8.3 (2) which provides as follows:

² See para. 4 above.

"Where proceedings relate to land they may be commenced only in the court office for the member state, Territory or Circuit in which the land is situated."

12. The proceedings need only "**relate to land**"; a very broad and widely encompassing phrase. Counsel for the Claimant/Respondent contends however, that the proceedings are not caught by rule 8. 3 (2). Counsel claims that the Claimant is seeking a declaration as to "beneficial interest" and that interest is an equitable interest. The Claimant submits that the Defendant/Applicant would be declared a trustee for "themselves [sic] and the spouse." The 'interest' she contends, is "*confined to trust and is not in land.*"
13. I am of the view that the 'interest', whether in law or equity, "relates to land" as envisaged by the CPR 2000. Further, it is no small part of land law and Private International Law and it is the general rule, that real property is governed by the *lex situs*; a principle that probably informs and underpins the CPR rule. In my view, in the absence of authorities to the contrary, the plain reading of the words of rule 8. 3 (2) require that the determination of the proprietary or other interest in the St. Lucian property be commenced in the Court office of St. Lucia.

Part 8.1(1)(c) – Affidavit or Statement of Claim.

14. On the question on whether the matter was properly commenced by the way of affidavit in support of the Fixed Date Claim form, I conclude that the proceedings under the Married Women's Property Act are civil proceedings and governed by the CPR 2000; more specifically Part 8.1(1)(b), and consequently was required to be supported by a Statement of Claim. The Married Women's Property Act has no rules providing for the use of an affidavit to commence proceedings. Further, I find that even if the proceedings were family proceedings, Section 11 and 12 of the Eastern Caribbean Supreme Court Act Cap. 143 would point us to the CPR 2000 – our civil procedure rules - before resort to the foreign U.K. Practice and Procedure and their rules. Ultimately however, if we are to resort to the UK practice and procedure, the authorities submitted by counsel for the defendant support their position that these proceedings, as it was in the UK, are Civil Proceedings and are likewise to be proceeded with by a Statement of Claim in support of its originating document.

Rectification – Overriding Objectives

15. The Defendant has submitted that if the Court finds favour with his submissions, the court may rectify the conundrum by giving leave to the claimant to file a Statement of Claim in support of its Action, thereby; safeguarding the Rules of Court, furthering the Overriding Objectives of the Court and maintaining the life of the Action. I find this solution to be eminently just and efficient and productive of the ventilation of the true issues remaining in the substantive matter.

16. IT IS HEREBY ORDERED AS FOLLOWS:

- (i) **That Part 1 of the Fixed date Claim Form is hereby struck out;**
- (ii) **The Claimant do file a Statement of Claim on or before the 16th November 2009 pending which, action on Part 2 of the Statement of Claim is stayed;**
- (iii) **The Respondent/Claimant pay the Applicants costs in this application in the sum of EC\$750.00.**

The following Authorities were cited in argument:

Claimant

- a) Black Law Dictionary with Pronunciations Abridged Sixth Edition Henry Campbell Black, M.A.
- b) Gissing v Gissing [1970] 2 All ER 780
- c) Green v Green (Jamaica) [2003] UKPC 39 (20 May 2003)
- d) Petit v Petit [1969] UKHL 5, [1969] 2 All ER 385, [1970] AC 777
- e) White v White [2000] UKHL 54; [2003] WLR 1571 (26th October, 2000)

Defendant

- a) Halsbury's Laws of England 4th Edition Reissue, volume 10, paragraph 314;
- b) Married Women's Property Act, Chapter 267 of the Laws of Antigua and Barbuda; and
- c) The Rules of the Supreme Court (Revision) 1970, Orders 7 & 8.



David C. Harris
High Court Judge
Antigua and Barbuda