

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO: 159 of 2003

BETWEEN

Anastasie Decoteau

Claimant

and

Norbert Francis

Defendant

Appearances

Mr. Martinus Francois for Claimant

Mrs. Kim St Rose for Defendant

2003: June 17
June 23

JUDGMENT

Introduction

[1] **Shanks J:** Mr Francis and Ms Decoteau met in about 1987 and started a relationship. He moved into her house in La Croix Maingot and they lived there for about two years. A few years later they moved to a plot of land in Fond Manger which was rented from the Crown. In 2001 the relationship went sour and Ms Decoteau asked Mr Francis to leave. She now seeks an order that he leave the plot and the house which is on it. He is content to leave the land but wishes to take the house with him. It is not disputed that the house is a chattel house: the issue between the parties is who owns it and what is to happen to it.

The evidence

- [2] I viewed the plot at Fond Manger on 17 June 2003 and heard evidence from the parties and from Sylvester Lewis on 23 June 2003. I have no hesitation in accepting the evidence of Mr Francis where it conflicted with that of Ms Decoteau. I base this conclusion on the demeanour of the witnesses, the fact that Mr Francis's evidence was confirmed to some extent by the unchallenged evidence of Mr Lewis and, most importantly, the fact that Ms Decoteau was demonstrably wrong or changed her position on a number of points (eg she originally said there was only one house on the plot which was not the case, she produced receipts which she said related to the building of a house on the plot which clearly came into existence years after the house was put up, she originally said that the house was put up in 1999 which was clearly not the case, she originally said she had constructed the house with her own money which was not her evidence at trial, and in a letter from her then lawyer dated 7 December 2001 she stated that Mr Francis could remove the house but then changed her mind). On the basis of this evidence I make the following relevant findings of fact.

Relevant Facts

- [3] The land to which the parties moved in Fond Manger was, as I say, Crown land. I accept Mr Francis's evidence that the two of them rented it together (see para 4 of his statement). It appears that for the first seven years or so no rent was paid. Thereafter the annual rent of \$250 was paid in the name of Ms Decoteau. I accept Mr Francis's evidence that he provided the \$250 but that it was agreed that Ms Decoteau would actually pay the rent and

have the receipts issued to her because he did not want his wife or children to have any kind of claim to the land.

[4] When the parties left La Croix Maingot they took with them to Fond Manger the existing board chattel house in which Ms Decoteau had lived with her former common law husband Denis Joseph. This house is still on the plot at Fond Manger but it is a very small house and in poor condition. Ms Decoteau described it as her kitchen.

[5] In about 1991 a new two bedroom plywood house was built on the plot and it is this which the parties are fighting over. Mr Francis's evidence (which, as I say, I accept) about the building of the house was that the cost of the materials for the house was about \$3,100 and that he purchased the materials with the assistance of a loan which he took from one of his employers, Duncan Enterprises in Cul-de-Sac, which he personally was responsible for repaying. The building work was carried out by Mr Francis himself with assistance from Ms Decoteau's son and various other friends and relatives including Mr Lewis who gave evidence. Apart from the materials purchased by Mr Francis, Ms Decoteau's son gave her one large window which was placed in her room and six galvanized iron sheets were taken from the roof of the old house for use in the new. Those six sheets are now old and in need of replacement. At some point, Mr Francis also provided a water tank for use with the house.

[6] As to his intention at the time he built the house, Mr Francis gave extremely frank evidence. He said: "At the time I built the house I was with the lady. My intention was that the house was not mine alone...The lady and I were living together and if one of us died

the house would remain for the one who survived.” Because she did not accept that Mr Francis had built the house Ms Decoteau gave no evidence about her intentions but I find that, spoken or not, the intention so expressed by Mr Francis represents the common intention of the parties at the time the house was built.

- [7] As to the contributions of the parties in general, the position was as follows. Mr Francis had three jobs: he was a gravedigger employed by the Babonneau council, a school caretaker at the Babonneau school and a part time security guard at Duncan Enterprises. He provided the money for the household except that Ms Decoteau sold some produce which he grew and purchased some groceries and fish with the proceeds. She, on the other hand, was responsible for looking after the house and cooking and feeding him.

The law

- [8] I have been referred to the case of *John v Smith*, a decision of Peterkin J in the High Court of St Lucia made on 5 April 1973. Peterkin J decided that in a case like this the solution was to be found in Art 916A(2) of the Civil Code. That provision applies the English law of implied, constructive and resulting trusts to the law of St Lucia. Peterkin J went on to apply the law as set out by Denning MR in the case of *Cooke v Head* [1972] 2 AllER 38.
- [9] In *Cooke v Head* Denning MR advocated a very liberal approach to finding the existence of an implied or constructive trust and to ascertaining the shares of the parties to property held on such a trust. I think that the English courts have stepped back from such a liberal approach since 1972 and that the current position is that it is essential to ascertain a common intention between the parties as to ownership and that such intention has been

acted on by the party seeking to establish her rights (see: *Grant v Edwards* [1986] 2 ALLER 426).

Conclusion on ownership

[10] Subject to some *de minimis* contributions, Mr Francis was undoubtedly responsible for building and paying for the house. *Prima facie* he is therefore the owner. However, regardless of the respective contributions of the parties, I have found that their common intention as to its ownership was as expressed by Mr Francis in the quotations from his evidence set out above. It seems to me that the only conclusion from that finding is that the property was to be held on behalf of both of them as joint beneficial tenants: this reflects the intention that they should both have the right to use the house and that, if either of them should die, the other should keep the house.

[11] Although there was no direct evidence about it, I also find that Ms Decoteau must have acted in reliance on such a common intention in allowing the house to be built on the land of which she was undoubtedly a joint tenant and in moving into the house and looking after the house and Mr Francis. I therefore find that the two of them held the house as joint tenants and in the event that the property has to be divided between them it should be divided on a 50:50 basis in accordance with the maxim “equality is equity”.

The letter of 7 December 2001

[12] As I have said, Ms Decoteau’s then lawyers wrote to Mr Francis on 7 December 2001 asking him to leave the land. The letter also asked him to “remove the renovated plywood house” and went on to say that “our client wishes nothing from you in return”.

[13] Ms St Rose for Mr Francis submitted that this letter estopped her from contending that she had any rights in relation to the house. The problem with this is that it is not clear that the letter is making an unequivocal representation that she has no rights in the house and that there is no evidence that Mr Francis acted to his detriment in reliance on such a representation (matters might have been different if he had moved off the land in response to the letter, but he did not).

[14] Another way of putting it might be to say that the letter amounted to an abandonment of such rights but it is clear that the letter was designed to settle matters between the parties and was in the nature of a “without prejudice” offer rather than an abandonment of rights.

[15] My conclusion remains therefore that the house is owned by the parties as joint tenants in equity.

Remedy

[16] The normal remedy given by the court in the case of jointly owned property which the parties no longer wish to hold in common and which cannot be divided is an order for sale of the property (see: the passage from the decision of Lord Denning MR in *Cooke v Head* quoted at p6 of *John v Smith*, Halsbury's Laws 4th Ed Vol 35 paras 1143 et seq and compare the provisions of the Civil Code dealing with partition and lictation, Art 640 in particular) and normally I doubt that the court can order one party to sell his or her share to the other in such circumstances.

[17] However, in the course of the trial Mr Francis, having valued the house at the time it was built at \$5,000, offered to pay \$2,500 to Ms Decoteau if he could remove it. For her part Ms Decoteau indicated at the very end of the case that she would also be prepared to pay to keep the house. However, I accept the evidence of Mr Francis at para 27 of his statement that she cannot pay for the house. Further, I am satisfied that she must have other accommodation available to her (if only because she has been away from the house for long periods during the last year or two), Mr Francis was the one who paid for and constructed the house and I note the offer previously made by Ms Decoteau in the letter of 7 December 2001.

[18] In these circumstances I am satisfied that Ms Decoteau cannot be prejudiced by an order that she hand over her share in exchange for a payment of \$2,500 and that this would be the fair solution as between the parties, rather than ordering the sale of a piece of property which is unlikely to raise anything like \$5,000 in an open sale. Since neither counsel suggested that I did not have power to make such an order if I was satisfied that it was the right thing to do I propose to order that upon payment of \$2,500 Mr Francis may remove the chattel house and the water tank from the plot of land.

[19] Both parties very sensibly indicated that they would not seek an order for costs against the other whatever the outcome of the case.

Outcome

[20] I will therefore order as follows:

- (1) The Defendant shall give up possession of the plot at Fond Manger currently occupied by the parties on or before 25 August 2003;
- (2) Provided he pays the sum of \$2,500 to the Claimant by that date, he may remove the two bedroom plywood chattel house and the water tank on the plot when he leaves;
- (3) Otherwise he may apply for an order for sale of the house;
- (4) No order as to costs.

Murray Shanks
High Court Judge (Ag.