

Benoit Leriche

Appellant

v.

Leon Cherry

Respondent

FROM

**THE COURT OF APPEAL OF
SAINT LUCIA**

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

Delivered the 1st July 2008

Present at the hearing:-

Lord Hoffmann
Lord Scott of Foscote
Lord Walker of Gestingthorpe
Baroness Hale of Richmond
Lord Neuberger of Abbotsbury

[Delivered by Lord Neuberger of Abbotsbury]

1. This appeal concerns the beneficial ownership of two parcels of land in St Lucia registered in the name of Mr Leriche. The first, known as La Borne, was purchased in 1979, and second, known as Mongiraud, was purchased in 1985. Mr Leriche's brother, Mr Cherry, contended that both properties had been purchased with his money, and he issued proceedings for a declaration they were held on trust for him alone.

2. The proceedings were heard by Saunders J in the High Court of Justice over three days in January 2003. In the course of his judgment, the

Judge said that the case fundamentally turned on issues of fact, and that “counsel did not disagree on the principles of law of trust which govern the case”. After considering the oral and written evidence before him, including the oral testimony of the two parties, the Judge explained, for reasons which were concisely and cogently expressed, why he preferred the evidence of Mr Cherry. He accordingly concluded that both properties had been purchased solely with money provided to Mr Leriche by Mr Cherry. (Whether Mr Leriche also contributed some of his own money towards the purchase price, and, if so, how much is unclear and was not the subject of any finding). The Judge also found that both properties “were purchased by Mr Leriche for and on behalf of himself and Mr Cherry”. Accordingly, he declared that Mr Leriche held both properties on trust for himself and Mr Cherry in equal shares. He then went on to order Mr Leriche to pay Mr Cherry’s costs, which he fixed at \$45,000.

3. Mr Leriche appealed and Mr Cherry cross-appealed. In a judgment given on 16 February 2005, the Court of Appeal dismissed both the appeal and the cross-appeal, but reduced the costs awarded against Mr Leriche to \$14,000.

4. In his judgment, with which Byron CJ and Redhead JA agreed, Alleyne JA said, unexceptionably, that the Court of Appeal should be reluctant to interfere with findings of fact made by a trial judge who had heard relevant oral evidence. After briefly reviewing the evidence, he then said, in relation to the La Borne land, that “there was ample evidence to support the judge’s conclusion that Mr Leriche was less believable than Mr Cherry”, and that, in relation to the Mongiraud land, although “the Judge was very scathing in his rejection of Mr Leriche’s evidence” he was nonetheless “persuaded that there was a common intention that the property would be for the beneficial interest of both brothers by [the] evidence”. So he concluded that, in “all the circumstances”, there was no basis upon which “the factual findings of the trial judge should be overruled”. Mr Leriche’s appeal and Mr Cherry’s cross-appeal on the substantive issue were thus both dismissed.

5. In relation to the \$45,000 costs, the Court of Appeal held that, in the light of the provision of CPR 65.5, the Judge should have concluded that Mr Cherry was only entitled to “prescribed costs”, and that, in those circumstances, the costs awarded should be reduced to \$14,000.

6. Mr Leriche now appeals to the Board, and contends that both properties should be declared to be beneficially his alone. There is no challenge by the estate of Mr Cherry (who, sadly, has died) to the Judge’s finding that Mr Leriche owns half the beneficial interest in the two properties. However, the day before the hearing of the appeal, a cross-

petition was presented on behalf of the Mr Cherry's estate against the Court of Appeal's reduction of the quantum of costs awarded to him.

7. In so far as it seeks to challenge the Judge's finding of fact that the two properties were purchased exclusively with Mr Cherry's money, Mr Leriche's appeal faces an impossibly high hurdle, which his counsel, Mr Radley-Gardner, faced up to with an appropriate mixture of courage, realism and brevity.

8. There are no grounds for the Board entertaining the contention that they should interfere with that factual finding, in view of the principle laid down in a number of cases, perhaps most famously *Devi v Roy* [1946] AC 508 at pp 520 to 521, that the Board should not review the evidence where there are concurrent judgments of two courts on a pure question of fact, unless it can exceptionally be shown that there has been some miscarriage of justice or violation of some principle of law of procedure. It is impossible to discern from the two judgments below, the evidence at first instance, or the argument before the Board any such exceptional circumstance in the present case.

9. It was contended that this is not a case where there were concurrent findings of fact, because the Court of Appeal did not expressly agree with each of the Judge's specific findings, and cited only some of those findings as the grounds for its decision to uphold the first instance judgment. There is nothing in that contention. The ultimate issue of fact which this appeal seeks to attack concerns the source of the money for the purchase of the two parcels of land, on which there have clearly been concurrent findings. It would be illogical and unfortunate if the rule considered in *Devi v Roy* could only apply where the Court of Appeal had expressly approved every finding of fact made at first instance. Quite apart from this, viewed on any common sense basis, although it is true that the Court of Appeal did not refer to every finding of fact made by the Judge, it is clear that they upheld his decision as they were not prepared to interfere with any of his findings of fact.

10. In any event, there was ample evidence to support the Judge's conclusion that both properties were purchased with Mr Cherry's money. Indeed, on the totality of the evidence, a finding that each of the two properties was not purchased, at least in the main, with Mr Cherry's money would have been positively perverse. The evidence that Mr Cherry had contributed at least half of the monies required for the purchase of each property was overwhelming. Given the Judge's conclusion that Mr Leriche owned half the beneficial interest in the two properties, it is therefore impossible to discern how Mr Leriche could anyway

realistically expect to be assisted by any reconsideration of the effect of the evidence.

11. As to the law, it was said on behalf of Mr Leriche that the Judge and the Court of Appeal went wrong, because they did not approach the question of the beneficial ownership of the two properties by expressly acknowledging that the *prima facie* position was that Mr Leriche, as the sole registered proprietor, was the beneficial owner. In the Board's view, there is nothing in that point. The Judge went straight to the factual question of who provided the money for the purchase of the two properties, and what the parties intended with regard to their beneficial ownership. That was because there was, as he understood it, and this does not appear to have been challenged in the Court of Appeal, no issue as to the legal principles applicable. He clearly preferred the evidence of Mr Cherry for a number of eminently understandable reasons. Accordingly, without any need to spell it out, he found that Mr Cherry had discharged the burden, imposed on him as a matter of law by virtue of the fact that each properties were registered in the name of Mr Leriche, of establishing that he had a beneficial interest in each property.

12. The petition of cross-appeal, presented by Mr Knox QC, also clearly and concisely, can similarly be disposed of shortly. In the Board's view, it would be inappropriate to allow this petition because of its very last minute nature, and because there was no application to the Court of Appeal to reconsider its decision on costs. As a result, the Board has no information as to the views and normal practice of the courts of St Lucia, and indeed of other courts of the East Caribbean, on the point sought to be raised, namely in what circumstances a departure from the prescribed level of costs is appropriate. It would also be unfair on Mr Leriche if he was expected to deal with the question raised by the petition, either now, on no real notice, or subsequently, only in writing.

13. In these circumstances, the Board will humbly advise Her Majesty that both the appeal and the petition to cross-appeal should be dismissed. Mr Leriche must pay the costs of Mr Cherry's estate.