



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. C.L. 2001 B-011

BETWEEN CARMEN BRYCE CLAIMANT
AND ANDREW ALPHANSO
LINTON DEFENDANTS

Miss A. Mulendwe for Claimant

Mrs. A Gibson-Henlin and Miss T. Dunn for Defendants.

Heard: 28th & 29th June, 2007,
7th September, 2007
& 19th October, 2007.

Marsh J.

The Claimant Carmen Bryce and the Defendant Andrew Aphanso Linton lived for sometime in a common law relationship from which issued two children, Andrew O'Neil Linton Jnr. and April Sabrina Antoinette Samantha Linton. This association began in about the year 1985. They lived together since about late 1991, at Armada Apartments.

The Claimant purchased a "studio quad unit" from Caribbean Housing Finance Corporation at Lot 564, West Chedwin, Greater Portmore in the parish of St. Catherine. The Defendant subsequently also purchased a studio quad unit in the same scheme as Claimant and which also adjoined Claimant's unit.

In 1994, the Claimant relocated to the United States leaving behind the 2 children and the Defendant. She sent to Jamaica to the Defendant

food and clothing and to a "dollar account" jointly held by herself and Defendant she also transferred United States dollars. This account being in their joint names, Defendant had free access to those funds.

It is contended by the Claimant that the reason that she and the Defendant selected adjoining lots was that they intended and agreed that they planned to improve and extend both as one "for future accommodation for our family."

The Defendant, despite being sent sums of money and material from the Claimant in the USA, Claimant avers, developed the two units in such a way that the development done on Defendant's unit was quite extensive while that done on Claimant's unit was not as agreed and intended.

There was displeasure on the part of the Claimant at this development; the relationship worsened significantly and the Claimant and Defendant now occupied separate parts of the conjoined units.

The Claimant further avers that she has suffered great financial loss as it was never the combined efforts of the Defendant and herself, but her own resources and funds which were used in Lot 633 at the expense of Lot 564. Further the Claimant states that she has an entitlement to three quarters (3/4) of the value of Lot 633; a refund of half the water rate and electricity paid by her.

It is the Defendant's contention that the units were selected by himself and the Claimant and it is agreed that they were both to jointly

fund and develop the said units into a family home for themselves and their family.

The Defendant agrees that the sacrifices allegedly made by the Claimant were made. The Defendant does not agree that the Claimant had gone to the United States with his consent but agrees that he paid her airfare of \$1,000.00, after she insisted. The Claimant denies this and contends that she paid her air fare.

The Defendant avers that he paid the deposit on each of the two lots and that he paid \$20,000.00 towards closing costs.

He contended that he had also deposited money in the joint account. He agreed that Claimant did send money but not in the amounts or with the frequency she contended. He stated that he contributed to the acquisition of both premises and that he had built the perimeter wall around the premises at a cost of approximately \$480,000.00. He grilled the entire premises (the conjoined units), installed gates and was responsible for paying the mortgage on both premises. While the Claimant was abroad, it was the Defendant's responsibility to take care of the household expenses and to pay school expenses for their children and for Claimant's niece.

The Defendant admits the sum of \$500,000 was received from the Claimant's sister in 1997, but that this sum went into the purchase of

materials and to complete existing walls and ceiling to the verandah and stairway.

He admits that in February 1999 he defaulted on the payment of mortgage on Lot 633 and that the Claimant paid the mortgage. This continued to the year 2000. He explains that the non-payment of the electricity bills was the result of Claimant's changing of the mailing address for the electricity bill without first advising him.

In his witness statement the Defendant indicated that the units were to be jointly funded and developed into a single family house and 'that as a result of our combined efforts and resources the units should belong to myself and Carmen jointly for our use, occupation and enjoyment as well as the use, occupation and enjoyment of our children.'

The Claimant has in her Writ of Summons and Statement of Claim dated, 11th January 2001 sought several orders from the Court.

She is asking the Court to alter the share held by the Defendant in the premises at Lot 633 and this in the proportions of 75% for herself and the rest for the Defendant; and for the Court to leave, unaltered, her beneficial interest in the Lot 564, as sole owner.

This Court is asked to make several declarations which can be made only after a determination of the ownership of beneficial interests in the property in question.

The Court will have to look to the evidence to decide what was the common intention of the parties at the time of the acquisition of the property in question. This intention must have been communicated by each party to the other; that each shall have a beneficial share in the property or, if the matter was not discussed, an answer as it relates to the common intention can be inferred from the financial contribution made by each.

In ***Springette v. Defoe (1992) 2 FLR 388*** the headnote reads -

“If two or more persons purchase property in their joint names and there was no declaration of trusts on which they were to hold the property, if they held the property on a resulting trust for the person who provided the purchase money, in the proportions in which they provided it, unless there was sufficient specific evidence of their common intention that they should be entitled in other proportions that common intention being a shared intention communicated between them and made manifest at the time of the transaction itself.”

This case was cited with approval in ***Oxley v. Hiscock (2004) EWCA CIV. 546***. Lord Justice Nourse in ***Grant v. Edwards (1986) CR. 638*** said, inter alia,

There is another and rarer class of case, of which the present may be one, where, although there may be no writing, the parties have orally declared themselves in such a way as to make their common intention plain. Here the Court does not have to look for conduct from which the intention can be

inferred; but only from conduct which amounts to acting upon it by the Claimant. And although that conduct can be the incurring of expenditure which is referable to the acquisition of the house, it need not necessarily be so."

Where, as in the instant case it has been established that each party has a beneficial interest in the property, the interest will be that which the parties intended. A common intention that there should be a joint interest pointed to the beneficial interest being equal.

It was the Claimant's submission that in law she has obtained a beneficial interest in the property of the Defendant by

- (a) the direct financial contribution to the mortgage arrears and monthly payments made
- (b) the substantial improvement to Lot 633 done with the knowledge of Defendant without objection;
- (c) the undisputed agreement whereby the Claimant significantly invested in Lot 633 thereby failing to invest elsewhere, to her detriment which significantly alters her position.

The Court is asked to make findings of fact and law as follows:—

- (i) The parties produced a son during a visiting relationship, and later while cohabiting in a union a daughter was born to them.
- (ii) That there was an expressed agreement between the parties that both would contribute equally to the development of their lots into a single family unit for her benefit, the benefit of their children and Defendant.
- (iii) That the Claimant in 1994 had migrated to the U.S.A. where she worked and lived until 1997; that the 2 children were left with Defendant in a government house.

- (iv) That the Claimant transferred sums of money from the U.S.A. to a joint account in Jamaica to which the Defendant had free access. The Claimant also sent food and money and clothing to the Defendant.
- (v) Lot 633 and Lot 564 were designed to be a part of each other having some rooms common to both.
- (vi) That the Defendant defaulted on payment of mortgage for Lot 633 and not only did Claimant settle the arrears but continued to pay mortgage for the said lot for a period.
- (vii) The said lots were disproportionately improved and developed.
- (viii) That the Claimant had successfully proved her case and was therefore entitled to the orders and declarations sought.

The Defendant's submissions ran counter to the Claimant's. Claimant and Defendant were each entitled to hold their respective properties beneficially without regard to any interest from the other.

There is sufficient evidence that each party should have a beneficial interest in the respective properties. The Claimant has failed to demonstrate that she has acted to her detriment.

The Court is to find that a just result in the circumstances would be to find that each party is entitled to the beneficial interest in each property in equal shares. The Court is to order that the parties be allowed to keep their respective properties and the Defendant should compensate the Claimant for the difference in value required to 'equalize' the property, a sum of \$650,000.00.

There is mutually agreed evidence that the Claimant and the Defendant had a relationship, first a visiting one then one in which they lived together and which produced two children, a son and a daughter. It was while they lived together that each purchased adjoining lots of land at West Chedwin, Greater Portmore, St. Catherine, being lot 564, and lot 633 respectively. Both parties have expressed in their respective witness statements the 'common intention' in the following manner:-

At paragraph 17 of the witness statement, the Claimant stated

"That in selecting the Lots the Defendant and I selected adjoining lots namely Lot 564 and Lot 633 as we intended and agreed that the lots would be held together as we planned to improve and extend both as one for future accommodation for our family."

The Defendant at paragraph 28 of his Witness Statement puts it this way:

"It was always my understanding that the houses were to be jointly funded and developed into a single family house and that as a result of our combined efforts and resources the units should belong to myself and Carmen jointly for our use, occupation and enjoyment as well as the use, occupation and enjoyment of our children."

The Claimant and the Defendant were engaged in December 1993 to be married. This assertion by the Claimant remains uncontroverted.

I accepted from the two paragraphs above referred to, as stated by the Claimant and the Defendant, that the reasons for not only purchasing the two units adjoining each other was to combine them into a single unit for the benefit and comfort of both Claimant and Defendant and their

children. The parties had intended to make legal their status and had intended to get married. If a nosey bystander had dared to ask of the parties, if things had not soured between what was their common intention when the purchases were made of the individual units and the decision made to improve and modify the units into one, it is an almost certainty that each would have indicated that they owned the conjoined unit (Lot 633 and Lot 564 combined) half and half.

I find that the common intention communicated to each other was that each would own a beneficial interest in the said conjoined premises. Each is entitled to that share considered by me in the circumstances to be fair having regard to the whole course of their interactions with regards to the property. This involves the arrangements made in order to meet outgoings e.g. mortgage contributions, utility payments and housekeeping.

The general presumption of law is that sole legal ownership is to be translated into sole beneficial ownership. In the instant case, there is no question that the sole legal owner of Lot 564 is the Claimant while the sole legal owner of Lot 633 is the Defendant.

So what is the situation regarding the conjoined unit (Lot 633 and Lot 564)? This must be considered to have been the result of the agreed intention of both parties to improve and develop both units into a single family home for the parties and their children. There was also a uniting of individual electricity and water supply into one. As for the amounts

expended to refurbish, improve and make changes to the units, it is agreed by the Claimant that the joint water supply and joint electricity were done because she and Defendant were developing the units as a joint family home. The Claimant agreed in cross examination that she and the Defendant had both contributed to the "conjoined units" in different proportions.

The Claimant is contending that she acted to her own detriment and in law had obtained a beneficial interest in Lot 633 as she had contributed to the substantive improvement of that lot. The fallacy of that submission is that the Claimant has maintained in her witness statement that it was intended to improve and extend both (the lots) as one for future accommodation for our family." (Paragraph 17)

The Claimant has attempted to show, by exhibited documents that she had transferred to a joint bank account in Jamaica, several sums in U.S. dollars, as also invoice for building material. This only served to show that her contribution to the improvement of the units into a single entity was more substantial than that of the Defendant. It is clear from the evidence that the parties were to have shared equally in the beneficial interest of the conjoined unit.

In *Eves v. Eve*, Brightman J was of the opinion that where there is a common intention that there should be a joint interest this pointed to the beneficial interest being equal.

This being the situation, each party has an equal beneficial interest in the conjoined unit. Since the relationship between them has soured to such an extent that they now lead separate lives although they reside in the said conjoined unit but in different sections of it, in the interest of what seems fair and just, the order of this Court is as follows:-

1. The Claimant is the holder of the sole beneficial interest in Lot 564.
2. The Defendant is the holder of the sole beneficial interest in Lot 633.
3. That the Defendant shall pay to the Claimant or to her attorney at law the sum of 50% of the difference in value between the value of Lot 633 and Lot 564 i.e. \$650,000, within six weeks hereof.
4. Each party to bear his own cost.
5. Liberty to apply
6. Leave to Appeal.