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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 88/91

BETWEEN BLANCHE CAMPBELL PLAINTIFF

A N D PATRICK TUCKER DEFENDANT

Miss Elham Bogle instructed by Keste Miller & Company for Plaintiff

**Mrs. Valerie Neita –Robertson and Miss Judith Gardener for
Defendant –**

Heard: 10th, 17th & 22nd March, 2001 and 10th April, 2001

DUKHARAN, J

This is an action brought by the Plaintiff against the Defendant who is her nephew, claiming to be the beneficial owner of property at 39 Lily Way, Mona, St. Andrew.

The Plaintiff is claiming ownership of the said premises by virtue of having provided the deposit for the purchasing of the premises and by paying monthly mortgage payments. The Plaintiff also claims that the Defendant unlawfully and fraudulently procured the registration of the said

premises in his name on Certificate of Title Registered at Volume 933 Folio 207.

The Defendant is contending that the Plaintiff provided the sum of \$37,500 as a deposit on a house, the sale of which fell through and a further sum of \$40,000, which was the proceeds of the sale of a property belonging to the Plaintiff.

The Defendant is further contending that both sums of money were used to satisfy the cost of shipping etc. of the Plaintiff's possession from the United States to Jamaica and was reimbursement for expenses incurred on her behalf.

An order was made in 1991 for the Plaintiff to take over the mortgage payments of the said property. However, the sale of the property was effected in a public auction by the Bank. The sum of \$1,000,000 remains in escrow.

The property in question therefore no longer exists and the Plaintiff's claim to be registered as the beneficial owner cannot be effected.

The Court has now to determine whether fraud was committed and how the sum held in escrow is to be distributed.

The Plaintiff in evidence said that after spending 21 years in the United States she decided to return to Jamaica in August 1988. She asked

the Defendant to purchase a house for her and gave him \$37,500 towards the down payment and a further sum of \$40,000. In 1988 the property in question was purchased and in December 1988 she moved into the property. She said she paid the mortgage payments every month. On one occasion she said she gave him US\$600 for mortgage payments. She said that every month she would give the Defendant sometime \$10,000, all towards mortgage payments. She said she gave the Defendant money by way of draft. She subsequently discovered that the Defendant was not paying the mortgage payments. She said that she was of the impression that the house was registered in her name and not the Defendant. She has claimed that the Defendant has no beneficial interest in the property.

The Defendant in evidence said that the Plaintiff provided the \$37,500 as a deposit on a house, the sale of which fell through and a further sum of \$40,000, the proceeds of the sale of a property belonging to the Plaintiff.

The Defendant is saying that those two sums were used by him to satisfy the costs of shipping and clearing the Plaintiff's personal belongings from the United States. In addition he had to grill a porch area of his house to store the Plaintiff's belongings from the United States. The Defendant contends that these sums provided by the Plaintiff were not used to purchase the property in question at 39 Lily Way but as reimbursement of

expenses referred to above. The Defendant also contends that in relation to the property he had to obtain two mortgages. The first one was to purchase the property and the second one for the repairs after hurricane Gilbert had done damage.

The Defendant said in evidence that both parties agreed that the Plaintiff would live on the property and used some of the rental to help with the mortgage Payments. The Plaintiff has said that no such agreement existed and then Defendants has no beneficial interest in the property whatsoever.

In assessing the evidence, the Plaintiff has not told the Court that she signed any documents relating to the transfer of the said property to her.

The evidence is that the Defendant got possession of the property on the 12th August, 1988. The Plaintiff moved into the premises in December 1988.

I find as a fact that the \$37,500 that the Plaintiff provided was not used to make the deposit on the property in question. I find that the Defendant used it to defray the cost of shipping and clearing the Plaintiff's possession from abroad. I also find from the evidence that this was discussed by the parties. It is a finding also that the deposit was provided by the Defendant for \$46,000 from Blaize Trust Bank. I find also that the

Defendant obtained two mortgages through a Staff Bank Facility at Mutual Security Bank which had to be in his name.

Although the Plaintiff said that she gave the Defendant money for mortgage payments every month, it is not clear from the evidence as to the total amount she handed over. She said the first payment she gave the Defendant was US\$600. Thereafter she said she gave him \$10,000 sometimes, and subsequently \$8000 per month.

In looking at the means of the Plaintiff, I have grave doubts as to whether she was in a position to find \$10,000 per month as stated in her evidence. Although she said she received Social Security of US\$700 from abroad (about J\$3,500 at the time) there is some doubt about that. In cross-examination she admitted that the mortgage payments were \$4,900 per month. An order was made in 1991 whereby she took over the mortgage Payments. She was unable to meet these payments when the Bank took possession and sold the property at Public Auction.

I find as a fact from the evidence that there was an agreement that the Plaintiff be given a life interest in the property. The Defendant put the Plaintiff in possession and that she paid no rent. A section of the property was rented with the Plaintiff collecting the rental. There is no evidence that the Plaintiff was paying any installments on the two mortgages.

It is a finding therefore that the Plaintiff should have an equitable life interest and that based on part performance of the oral agreement between the parties the claim for fraud has not been made out.

As stated before the property no longer exists and after deduction over one (1) million dollars remains in the Bank. How is this to be distributed? I find as a fact that the Plaintiff did contribute towards the purchase price of \$37,500. Although I find that the Defendant did use it for other purposes the intention of the Plaintiff ^{was} as that it be used for an initial deposit. I take into account the \$40,000 that was provided by the Plaintiff. The total contribution would therefore be \$77,500. I do believe that the Plaintiff did make some contribution towards the mortgage of the property. However, from the evidence I find that this contribution was minimal.

I take into account the concessionary terms on which the Defendant obtained the mortgages from the staff facility of his employer's Bank.

I am of the view therefore that the Plaintiff in all the circumstances would be entitled to one third (1/3) of the amount which is held in the Bank.

In the circumstances there will be no order as to costs.