

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 00160/2006

BETWEEN            MAXINE YOLANDA COLEY            CLAIMANT  
AND                    LESLIE CAROL COLEY                    DEFENDANT

J. Cummings and A. Stewart instructed by Archer Cummings & Company for Claimant

P. Rogers instructed by Rogers Burgher & Company for Defendant

Heard: October 29, November 2, 2007 and May 16, 2008

*Purchase of Property by Husband before Marriage - Contribution of Wife before and after Marriage - Intention of Parties - Interest of Wife in Husband's Property*

**Beswick J**

1. Mr. and Mrs. Coley were married on December 16, 2001. Prior to that whilst they were unmarried and living together at other premises, Mr. Coley purchased a home in Greater Portmore, St. Catherine. They later moved into the improved premises and eventually married. Mrs. Coley did not contribute to the purchase price but subsequently gave Mr. Coley money every month.
2. By this suit Mrs. Coley seeks a declaration for interest in the property, payment for improvements done to the property and asks to be allowed to retrieve certain items from the property.
3. I have found that she has no interest in the property but that she should be allowed to retrieve some items. My reasons follow.

## **Purchase of the Property**

4. There is very little on which the Coleys agree concerning this suit. Although they agree that before marriage they lived in the same house, they disagree as to whether they were then in a common law relationship and as to who owned that property. They even disagree as to when they met and when an intimate relationship started.
5. However, they do agree that it was while they were living together, unmarried, that Mr. Coley purchased Lot 88 Greater Portmore. Mrs. Coley's evidence is that he bought it through the National Housing Trust (NHT) utilizing his mother's NHT contributions. She said that the title is therefore registered in the name of her husband and his mother.
6. Mr. Coley on the other hand says that he purchased the house from National Housing Development Corporation (NHDC) for \$750,000.00 with no help from his mother or anyone else. Consequently, the title, he said, is registered solely in his name. The Certificate of Title which is exhibited shows that Lot 88 Greater Portmore was transferred on March 10, 1999 to Leslie Carol Coley with a mortgage to Caribbean Housing Finance Corporation Limited (CHFC). There is no interest vested in NHT.
7. I have been provided with no reason to question the validity of the title. It supports Mr. Coley's evidence about the purchase. It is therefore clear that Mrs. Coley is less than familiar with important details of the acquisition of the property. Indeed, she agrees that she did not even know the day when Mr. Coley took possession of the house.

### **Intention of the Parties**

8. Mr. Coley's evidence is that when he purchased the house he had no intention that Mrs. Coley would have an interest in it as the matrimonial home. He said that the reason for buying the premises was to provide a roof over the head of his then infant daughter Shannon Coley, and her mother Avagail Thompson. Shannon had been born in 1994. He had shared an intimate visiting relationship with Ms. Thompson from 1991. Ms. Thompson found out about Mrs. Coley when Shannon was about one-and-half to two years old. He was not married at the time but when Ms. Thompson heard about his relationship with Mrs. Coley, he and Ms. Thompson argued and she decided that she herself would not live in the home which he was providing for her. However, Shannon even now stays overnight at the house occasionally and sometimes leaves for school from there.
9. Mrs. Coley says that after the house was bought, whilst they were still unmarried, she and her husband agreed verbally that they intended the property to be their matrimonial home. According to her, he told her that since they were going to build a life together he was fixing it up for them to reside there, but they both thought it was not pretty enough and decided to refurbish it before moving in.
10. Mr. Coley is adamant that it was he alone who decided to remodel the house. It is undisputed that Mr. Coley designed the changes and supervised them. There was no input from Mrs. Coley.
11. Mrs. Coley's evidence is that it was because Mr. Coley wanted to surprise her with the end result that she did not go to the house for about four months in order to allow it to be completed. She agreed that Mr. Coley hired the men to work on

the house and said that that was because he was the man but she herself met the workmen and was satisfied about their good work.

12. Mr. Coley's evidence is that he did not take her to Lot 88 until all improvements had been completed. His wife was only "vaguely aware" of the work on the house. He says that she never met any of the workmen. He says that she contributed neither time, money nor energy. He took her there because he wanted to prepare the home to allow his mother to stay there during a visit.
13. I accept Mr. Coley's account of Mrs. Coley's lack of involvement in the improvement of the premises. Mrs. Coley has given no explanation of the circumstances in which she was able to meet the workmen and become satisfied about the work they were doing, when she agrees that she did not go to the premises until refurbishing was finished.
14. Mr. Coley's evidence is that in 1996 when the premises were being remodelled neither he nor Mrs. Coley contemplated marriage to each other and he had no intention of the premises becoming a matrimonial home. Had it been otherwise, he says, he would have added Mrs. Coley's name as a joint tenant.
15. He says that not even their bank accounts did he want to have joined although Mrs. Coley had repeatedly requested that they open a joint account. He lent her money on occasions and expected it to be returned. For her part, Mrs. Coley says Mr. Coley never lent her money at all.

**Contribution of Mrs. Coley**

16. It is agreed that Mrs. Coley was a registered nurse/midwife at Victoria Jubilee Hospital (VJH). She testified that her salary was \$16,000.00 per month from the

VJH and that she also had a part time job as a nurse with a private doctor while she was working at VJH. Mr. Coley contested that figure and exhibited a salary slip from his wife showing her salary to be \$13,063.00 per month gross and \$10,689.00 net. She agreed that the pay slip exhibited was indeed a copy of her pay slip dated May 31, 1997 but did not agree that she earned what it said. She gave no explanation as to the reason for the salary slip to be viewed as being inaccurate, and she exhibited no different proof of her salary.

17. According to her, she gave her salary cheques to Mr. Coley and he used them to pay for all utility bills, to purchase groceries and to refurbish the house. However, Mr. Coley says that he collected the salary cheques from Mrs. Coley simply in order to change them for her, certainly not for the purposes which she stated. He would immediately supply her with the value of the cheque in cash. Mrs. Coley was living with him at that time and he generally paid the utility and grocery bills. It was only occasionally that Mrs. Coley paid any of those. In fact she had an obligation to pay him \$12,000.00 monthly as he had made a down payment of \$150,000.00 on a car for her with the understanding that she would repay him over a two-year period. Mr. Coley says that even so he assisted her sometimes with those monthly payments.

18. According to Mr. Coley, Mrs. Coley would have been unable to contribute to the remodelling of the Portmore premises on her salary. Mrs. Coley, on the other hand, says that her salary was dedicated to remodelling the house at Lot 88. She says that she only stopped giving the salary cheques when the remodelling was finished. She also states that she stopped giving him her cheques because he had

too much control over her. She thus gives two apparently distinct reasons for stopping the practice of giving Mr. Coley the cheques.

19. Further, she asserts that the downpayment on her car was her money as her husband had access to her account although she provided no evidence of Mr. Coley actually accessing that account and using the money. She says that those monthly car expenses arose after the house was built and she would have been free of house payments as the car was bought in 1998. However, she later acknowledged she was not sure as to when they had moved.

#### **Contribution of Mr. Coley**

20. Mr. Coley's evidence is that without informing Mrs. Coley he made the decision to purchase the house and also made a down payment of \$150,000.00. Although he is now a freight forwarder, at the time he was an assistant manager employed with Jamaica Air Freighters, earning about \$19,000.00 per month after taxes. He also "did a little on the side," so that his salary averaged around \$40 - \$50,000.00 per month. He exhibited no pay slips. Mrs. Coley says that he has always been a customs broker. In any event, according to him he made the purchase and made improvements with help from no one.

#### **Residence of the Parties**

21. Mr. and Mrs. Coley moved to the property when it was fully refurbished and furnished. This was before their marriage. Having moved into the house in about 1997 - 1998, Mrs. Coley relocated in November 2000 to Bermuda where she was trying to make a better living. Her evidence is that she and Mr. Coley had discussed the acquisition of a new home in a better neighbourhood. Mr. Coley

denies any such discussions. According to him, he made it clear to her that whilst he cared for her he did not believe that a long distance relationship would work so that they both decided that they would see other persons.

### **Marriage**

22. Mr. Coley's evidence is that in January 2001 Mrs. Coley telephoned him saying that she knew he was seeing someone else and so was she but she loved Mr. Coley and therefore wanted them to get married and spend the rest of their lives together. They were married in December 2001.
23. She returned to Bermuda about two weeks later. They separated early in 2002. Mr. Coley puts that date as January 2002 when he says that she informed him by telephone that she was filing for divorce. Mrs. Coley says that they separated in April 2002 when she had returned to Jamaica to have her honeymoon and instead found that the relationship did not "feel right." Someone informed her that her husband and a woman were living in their matrimonial home while she was in Bermuda.
24. Mrs. Coley asserts that her passport will show that she came to Jamaica in April 2002 and she says that at that time she lived with her husband at Lot 88 Greater Portmore as the matrimonial home. The passport was not exhibited.
25. By either account they spent a very short time as husband and wife in Lot 88 Greater Portmore.

### **Current Contributions towards the house**

26. At the time of filing of the suit, in 2004, Mrs. Coley's net salary per month was US \$4,425.98 and she states that she regularly sent US\$1,000.00 per month from

Bermuda to Mr. Coley as his business was not profitable. This was to be used to maintain the house, among other things. Her evidence is also that this money which she sends from Bermuda and her earlier salary cheques in Jamaica were to assist in a substantial manner with improvements done to the matrimonial home Lot 88. Mrs. Coley's evidence is that she continued giving Mr. Coley cheques for as long as the refurbishing continued. She started giving him the cheques from day one of the refurbishing exercise, but she has no idea how much money she has given him nor how much has been spent on modification.

27. Mr. Coley states that Mrs. Coley has contributed nothing to either the purchase or the improvement of the property. Further, it is Mr. Coley's unchallenged evidence that since their separation in 2002 he has done further refurbishing and construction at a cost of over Two Million Dollars (\$2 million).

28. **Interest in the property**

Counsel for Mrs. Coley submits that Mr. Coley encouraged Mrs. Coley by both word and conduct to believe that she would enjoy a benefit in his property provided that she expended monies on making improvements to the property. She says that he is estopped from denying Mrs. Coley's right to an interest because she acted to her detriment based on Mr. Coley's assurance that she would have an interest and that the property would be the matrimonial home. She invited the court to view Mr. Coley's conduct as being unconscionable and unfair in refusing to give Mrs. Coley any interest in the property.

29. Counsel submits that Mrs. Coley is entitled to half of the value of the property or alternatively at least the value of the first set of improvement done to the property



at the time of the break down of their relationship or a percentage of the current market value of the property.

**Issues**

30. (1) The first issue to be determined is what the parties intended when Lot 88 Greater Portmore was purchased.

It is undisputed that Mr. Coley purchased the property while he and Mrs. Coley lived together, unmarried. The fact that Mr. Coley chose not to include Mrs. Coley's name on the registered title of the property, in my view speaks volumes. His intention certainly was not to give Mrs. Coley any legal interest in the property. I accept his evidence that his intention at the time of the purchase of the property was to provide shelter for his child and her mother.

It is clear to me that while the property was being purchased Mrs. Coley was only vaguely aware of any details. She has falsely asserted that Mr. Coley's mother's name is on the title and she also has falsely asserted that the property was bought through NHT. I do not accept that she made mortgage payments. The Certificate of Title supports my finding that the mortgage is not paid to NHT. Indeed, Mr. Coley's undisputed evidence is that he made mortgage payments to NHDC.

Mrs. Coley agrees that she did not help to choose the home nor did she know where the money came from to purchase it save that Mr. Coley told her he got the money from his job.

These facts fortify my view that when Mr. Coley purchased the property Mrs. Coley herself had no intention of being an owner of it at that time.

(2) The next issue to be determined is whether when substantial improvements were to be made to the premises, the parties altered their intention so that they would then intend for Mrs. Coley to have an interest.

31. Mrs. Coley's evidence is that she contributed substantially to the expenses for the improvement. Mr. Coley denies this. I prefer Mr. Coley's evidence. Mr. Coley exhibited his wife's pay slip which discloses her as earning \$13,063.00 per month gross whereas it was her evidence that she was earning \$16,000.00 per month. There is no evidence supporting that amount. It is undisputed that while the improvements were being done Mrs. Coley was a student nurse and later a nurse. I accept that she was at that time unable to help herself fully financially and she received some assistance from Mr. Coley. She lived with his family and him in Norman Gardens. She did not even know the correct address.

32. It is my view that at that time before their marriage, Mr. Coley was in fact the provider in that relationship – providing her with shelter and some living expenses. Whilst they were in this unmarried state, Mrs. Coley for the most part was not in a position to assist Mr. Coley financially until she migrated to Bermuda. I therefore reject her evidence that she contributed some of her nurse's salary earned in Jamaica towards the improvement.

33. However, I accept the evidence that she sent some of her newly earned wealth to Mr. Coley from Bermuda. At that time they were not married and I accept as true Mr. Coley's unchallenged evidence that he had told her of his dislike of long distance romances. There is no evidence of Mr. Coley encouraging her to contribute towards the property. In my view, up to then he had no intention of

marrying Mrs. Coley in the near future, nor did he have any intention of giving her an interest in his house. Mr. Coley's evidence is that the money she sent from Bermuda was for her mother's home improvements and to repay US\$5,000.00 which he said he had lent her when she was going to Bermuda. I accept on a balance of probabilities that some of the money sent by Mrs. Coley from Bermuda was to repay a loan from Mr. Coley. The history of their relationship was that Mr. Coley provided finances to Mrs. Coley and I believe that he lent her money when she set forth on her new endeavour in a foreign country. Any remaining sums I accept as being sums to be converted and sent to her mother.

34. The first set of improvements had already been done before Mrs. Coley left for Bermuda. If her evidence is to be believed, she would in effect, be contributing to those improvements retroactively and expecting a share.
35. It is my view that in the period between when Mrs. Coley was in Bermuda and when she married, neither party had any intention of her gaining an interest in the property. Indeed, I find on a balance of probabilities that up until 2000, the parties had no commitment to marry each other. There is no evidence that up until then Mrs. Coley raised any concern about receiving an interest in the property or about being compensated for any input she had made in the property.

If either party thought of any such interest, that would have been during the period between January 2001 when Mrs. Coley introduced the idea of marriage and December 2001 when they were actually married. Up to at least January

2001 they were both seeing other persons. In my view neither of them directed their minds to Mrs. Coley acquiring an interest in Lot 88.

36. I accept Mr. Coley's evidence that his plan for their relationship when she left for Bermuda was that after she spent three years there she would come back and he would buy a house and move from Greater Portmore. Mrs. Coley proposed marriage a mere two months after she had relocated to Bermuda. There is no evidence that this fact altered Mr. Coley's intention to buy another house three years in the future.

Meanwhile there is no evidence to suggest that Mr. Coley's intention ever changed so as to include her as an owner in Lot 88.

37. According to Mr. Coley, he sold Mrs. Coley's car to help to pay for the wedding which he considered to be an expensive wedding, at which over 100 guests attended. There is no evidence that Mr. and Mrs. Coley discussed the acquisition of a matrimonial home or that they discussed her contributing to improvements and thereby getting an interest in Lot 88. Mr. Coley's home was already in existence. Each of them had had different romantic attachments and marriage had suddenly arisen with its attendant expenses. Their concern was with the wedding.

38. The period of marriage until separation was short. Mr. Coley puts it at two months, Mrs. Coley at four months. There is no evidence that Mrs. Coley continued to send money to Mr. Coley after their wedding. There is no evidence that she contributed in any way whatsoever to the physical maintenance of Lot 88.

I find on a balance of probabilities that even in this post wedding period there was no intention to create an interest for Mrs. Coley in Lot 88.

39. It was Lord Morris of Borth-Gest who said:

“The court cannot ascribe intentions which the parties in fact never had. Nor can ownership of property be affected by the mere circumstance that harmony has been replaced by discord.”  
[**Gissing v Gissing** (1970) 2 All ER 780 at 783].

There is no evidence of any agreement at the time when Mr. Coley bought the house or when he improved it, as to Mrs. Coley holding any interest in the property.

40. There is no evidence from which I am prepared to infer that it was the common intention of Mr. and Mrs. Coley that Mrs. Coley should have a beneficial interest in the property.

41. It is my finding on a balance of probabilities that at no time did both parties share an intention that Mrs. Coley should enjoy an interest in Lot 88 Greater Portmore nor did Mrs. Coley make any contribution with that intent.

#### **Items left on Premises**

42. Mrs. Coley claims that Mr. Coley has refused to return to her several household effects which she says that she purchased for the house, as well as some of her personal property. She seeks to either have the goods returned or to be compensated for their conversion. Mr. Coley denies that the items which she lists are hers and says that in 2004 she took items which belonged to him and his daughter and he wishes her to return them or their value. He did not, however, file such a claim.

43. Mrs. Coley has not produced receipts for the items she claims because, according to her, she believed in their marriage and so she did not “hoard” the receipts. In any event whatever receipts she did retain have been left in the matrimonial home. Neither Mr. Coley nor Mrs. Coley provided proof of ownership of the items in the house.
44. Mr. Coley’s uncontradicted evidence is that Mrs. Coley had turned up at Lot 88 with uniformed police officers and removed items claiming they were hers. He says that for a peaceful life he allowed her to take all that she wanted and cannot understand how she now claims additional items, apart from a vanity and a crystal bowl which he acknowledges may be hers.
45. I reject her claim concerning her right to any property on the premises except for the vanity and crystal bowl. I accept that she has accessed the assistance of law officers and has already removed from the premises items which she says were hers. She was at liberty to remove her property. Whatever she left behind after that, I accept, on a balance of probabilities, is not hers.

**Orders**

46. The orders are therefore:
- (1) the claim for an Order and/or Declaration that Mrs. Coley is entitled to an interest in the property at Lot 88, 3 North, Greater Portmore, St. Catherine is refused
  - (2) Mr. Coley is to allow Mrs. Coley to obtain from the premises one vanity and one crystal bowl or to account to her for their whereabouts
  - (3) Costs to Mr. Coley to be agreed or taxed.