

Judgment Book

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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E.58/1988

BETWEEN

DALTON HILL

PLAINTIFF

A N D

BRADLEY C. BECKER
(Executor Este. Elizabeth
Ann Chance, Deceased)

Mr. A. Williams, Miss Vivalyn Downer and Miss D. Newland for Plaintiff.

Mr. M. Frankson for Defendant.

Heard: 10th, 11th, 12th, 26th, 27th, 29th,
February, 1996, 6th, 7th, 8th, March,
1996 and 4th April, 1997.

ELLIS, J.

The plaintiff alleges that the deceased Elizabeth Ann Chance and himself lived together as man and wife some seventeen years until her death in February, 1987.

The deceased owned a piece of real estate in Negril, Westmoreland and he and Mrs. Chance pooled their resources and developed the property. They constructed cottages which were rented to tourists under the name of Jamaica Tamboo.

He says the pooling of resources to the improvement of the property for their mutual benefit continued until Mrs. Chance died in 1987.

Mrs. Chance he says, died testate and Bradley Becker is the executor (see Exhibit 10).

The defendant/executor offered to pay him a ten percent share of the value of Jamaica Tamboo. He refused to accept the ten percent and the defendant ejected him from any participation in the business. He says he has received no share of the profits from the business and was dismissed from managing the business on the basis that he was only an employee. This latter circumstance or relationship the plaintiff accepted as shown in Exhibit 9.

The plaintiff therefore claims:

- (1) A declaration that the defendant holds, and operates Jamaica Tamboo on trust

for himself and the plaintiff in equal shares.

- (ii) A declaration that plaintiff is an equitable owner of half a share in Jamaica Tamboo.
- (iii) Injunction restraining the defendant, his servant or agents from disposing of the business or assets and from doing any act that will affect the plaintiff's interest in the business.
- (iv) An injunction restraining the defendant his servant or agents from preventing the plaintiff's entry onto the business premises or from preventing his access to books of accounts of the business.
- (v) An account of all income expenditures and profits of the business.

The defendant by his pleading denies the plaintiff's allegation as to the cohabitation as man and wife with Mrs. Chance the deceased. He states that there was no pooling of resources with the plaintiff to improve the property. The improvements to the property were done from the resources of Mrs. Chance exclusive of any resources from the plaintiff who was only a paid servant of Mrs. Chance.

He says that on his entering onto his executorship he sought to restructure the method of plaintiff's remuneration by offering him a 10% of gross income from rental of the cottages. This should relate to the high point of the tourist season 1st December to 15th March each year with free accommodation, food, transportation and telephone. This restructuring he says was offered in recognition of the plaintiff's past services to the business as an employee.

The plaintiff refused the offer and he terminated his services as Manager and offered him a gratuity of \$100,000.00 in appreciation of his long service. This latter offer was also refused by the plaintiff.

Lastly, he says there was no agreement of any sort between plaintiff and deceased which gave the plaintiff any vested interest in the business. He denies the plaintiff's entitlement to any of the reliefs which he seeks.

In 1970 Mrs. Chance and her husband came from the U.S.A. to Negril and acquired property called Tamboo on the beach. The property was

not fully developed and consisted of a small board house and another under construction.

The plaintiff then nineteen years old, "managed" a Yatch Club at Negril and became acquainted with Mrs. Chance and her husband. Mrs. Chance and the plaintiff, not unusually, embarked on a sexual relationship.

On the death of her husband, Mrs. Chance left Jamaica to bury his body in the U.S.A. She subsequently returned, and her relationship with the plaintiff continued with him being her escort to parties and other social events in Negril.

The plaintiff in consequence of the aforesaid relationship became a recipient of Mrs. Chance's generosity in gifts of clothes and other personal items.

During the period of the parties relationship until the death of Mrs. Chance, additional rooms were constructed at Jamaica Tamboo.

The cross examination of the plaintiff revealed that he had no documentary evidence which proved his interest in Jamaica Tamboo or that he invested money therein. The only evidence remotely suggesting his interest in Jamaica Tamboo were Exhibit I which is a receipt for a spirit licence and Exhibit II an insurance certificate which bears the names of the plaintiff and Mrs. Chance. There were also Exhibits 3A and 3B which advertised Jamaica Tamboo in the names of Mrs. Chance and the plaintiff. Bank Statements (Exhibits 4 and 5) were in both names.

The plaintiff placed reliance on certain cheques - Exhibits 6A - 6E as evidence of a legal interest in Jamaica Tamboo. I do not find that those cheques and the exhibits 1-3A and B and 4 and 5 provide any evidence of the interest claimed by the plaintiff. The mere fact that the plaintiff's name appears on the documents in my opinion is not enough to found a claim to an interest in Jamaica Tamboo.

Does the defendant as executor for Mrs. Chance hold the property on trust for the plaintiff?

Plaintiff's attorney Miss Newland in her submissions argued for

an affirmative answer. She said that there was a common intention that both parties should have a beneficial interest in the property. Furthermore, the plaintiff acted to his detriment in keeping with that common intention.

She invited the court to infer that common intention from the circumstances and conduct of Mrs. Chance. The offer by the defendant to pay the plaintiff \$100,000.00 was put forward as a circumstance to found an inference of a common intention.

In all the circumstances, and from the exhibits I can find nothing on which to justifiably found an inference of common intention. The letters from Mrs. Chance to the plaintiff clearly disipate any successful contention for a common intention that the plaintiff should have any beneficial interest in Jamaica Tamboo. Moreover, the will of Mrs. Chance, Exhibit 10, makes no mention of the plaintiff. The authenticity of the will has not been challenged.

The case of Grant v. Edwards [1986] 2 All E.R. 426 on my reading provides no support for the plaintiff. That case requires a common intention before there can be an action to his detriment, by a claimant. The unreported case of Stockert v. Geddes C.L. S-027/92 was drawn to my attention. That case to my mind gives no support to the plaintiff. That case differs from the instant case in that the facts and evidence in support thereof are not present here.

Since I have found no common intention, the question of any action to his detriment on the part of the plaintiff admits of no further consideration.

The offer to pay the plaintiff \$100,000.00 is of no avail it not being the conduct of Mrs. Chance the only other party who could provide conduct from which a common intention could be inferred.

There is no doubt that the plaintiff and Mrs. Chance had a relation of some years. However on the evidence and considering all the circumstances, I find nothing in that relationship over and above a sexual one. I have not been able to find any decision in our jurisprudence which gives to one party to such a relationship a claim in

law or equity, to a share of the other party's property. The absence of case law is not surprising since an interest in property cannot rest on such flimsy ground as a sexual relation without more.

In the light of the foregoing I am constrained to reject the plaintiff's submissions and I accept the submissions of Mr. Frankson for the defendant. The declarations and other reliefs sought are refused.

There will be judgment for the defendant with costs to be agreed or taxed.