

58

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E 545 OF 1996

BETWEEN	WILLIAM EDMONDSON	PLAINTIFF/APPLICANT
A N D	MARGARET EDMONDSON	DEFENDANT/RESPONDENT

Mr. B.E. Frankson for the plaintiff/applicant  
Miss Sandra Johnson for the defendant/respondent

Heard: March 9, 1998; April 1, 1999; and  
June 16, 1999

PANTON, J.

In this matter, the applicant is seeking an Order -

- "1. Declaring that the applicant is the equitable owner of all that parcel of land part of Ironshore and Hatfield Estate part of Torado Heights in the parish of St. James, being part of the land comprised in certificate of Title registered at Volume 995 Folio 570 and situate at 347 Sugar Mill Road, Ironshore, Montego Bay in the parish of St. James and registered at Volume 1061 Folio 184 of Register Book of Titles.
2. That the respondent's share of the said property is held in trust for the sole use and benefit of the said applicant.
3. Granting an injunction to prevent the respondent and the respondent's servants and/or agents howsoever from interfering with the applicant's peaceful possession and enjoyment of the said property.
4. That the respondent do pay the costs of these proceedings.
5. Such further and/or other relief as this Honourable Court deems fit."

The respondent has counterclaimed, seeking the following -

1. a declaration that she 'is entitled to one half share of the legal and beneficial interest in the said land" (referred to above);
2. a declaration that she is entitled to one half share of the beneficial interest in certain stated chattels; and

3. a declaration that she "is entitled to one half share of the legal and beneficial interest in the shares jointly owned by the parties in time share condominium situated in the state of Florida in the U.S.A."

The evidence presented to the Court was in the form of affidavits, oral evidence under cross examination, and documents.

Having considered the manner in which they gave their evidence before me, I concluded that neither party was fully truthful. In some respects each tried to mislead the Court. For example, the respondent's evidence that in 1990 she was earning \$90,000 per week from her salon is not accepted as credible especially when it is noted that she was unable to say how much tax she paid each year. She appeared to have been trying to give the impression that she was more affluent than she really was. The applicant on the other hand tried to portray the marriage as a sham, "a business marriage", and something that resulted from "a lust affection". In this regard I reject his evidence completely. I find that this was a genuine marriage between two persons who intended to live together on a permanent basis. I have concluded thus due to the fact that the parties went through two marriage ceremonies, the first one having been shown to have been invalid as the applicant had not been lawfully divorced. I find that there was "love at first sight" as stated by the respondent in her affidavit dated 7th March, 1997, and that the parties first lived together in premises rented by the respondent.

I find that the conduct of the parties and their stated intentions indicate quite clearly that not only did they intend to genuinely marry and live together but also to own the property in question jointly. I reject the idea that the respondent would have provided the entire deposit on the property so as to secure the property for the applicant solely. In my view this behaviour on the part of the respondent was in keeping with the execution of a joint plan by the parties. The placing of the name of the respondent on the title, her subsequent participation in the construction process (though somewhat exaggerated) and the unforced transfer of the property by the applicant to the respondent all in my view indicate that there was a common intention for the respondent and the applicant to own jointly, and that the respondent had a substantial interest in the property. The re-transfer by the respondent into their joint names is in keeping with their original intention. I reject the assertion of the applicant that the property was registered in their joint

names as he had been misled by the respondent that it was not possible for him (the applicant) as an American citizen to hold land in Jamaica, without there being a Jamaican co-owner.

The applicant who is 43 years old and has served in the United States military, has been travelling regularly to Jamaica since 1987. He is no stranger to these shores. He is very careful with his cash. He doesn't keep it in an institution in the United States he keeps it in his own safe in that country. It is hardly likely that such a person would wish to share his property purchased with his closely-guarded cash unless he had a genuine intention for the sharing to take place.

In view of these findings, the applicant's claim fails. In respect of the land, the respondent's counter-claim succeeds and a declaration is accordingly made that she is entitled to one half share of the legal and beneficial interest in the said land.

#### The chattels

There is no acceptable evidence that the respondent has any interest in the various items listed in paragraph 7a of her "Notice of counter-claim", with the exception of the bed, dinnerwares, pots, pans and utensils.

I find that the motor vehicles, satellite dish, chandelier and the equipment used during construction were bought by the applicant with his own funds. The applicant, apparently, has conceded that the respondent is entitled to a king-size bed - see paragraph 6 of his affidavit dated 7th July, 1997. That being so, the respondent succeeds with this part of her counterclaim by being awarded the bed and half share of the dinnerwares, pots pans and utensils.

#### Time sharing condominium

The respondent has not presented any evidence to support this aspect of her claim. Exhibit ME8, which is a letter from Sea Gardens Beach and Tennis Resort in Florida to the parties, addressed as mortgagors, does not indicate what if anything is owned by the parties and the terms of such ownership.

As a result of the conclusions that I have arrived at, the following orders are made in keeping with the respondent's counterclaim:

1. the property is to be valued by a valuator agreed to by the parties; failing agreement the Registrar of the Supreme Court is empowered to appoint one;

2. either party may purchase the interest of the other;
3. alternatively, the property is to be sold by public auction or private treaty and the net proceeds divided equally between the parties after deduction of all costs incidental to the sale;
4. the Registrar of the Supreme Court is empowered to sign all necessary documents to give effect to the sale in the event of either party failing to sign the same;
5. the plaintiff/applicant is to render an account of all rents and profits collected by him or on his behalf since October 25, 1996, in respect of the said premises and to pay to the defendant/respondent one half of same, subject to the deduction of all expenses incurred for maintenance and taxes by the plaintiff/applicant.
6. the bed is to be delivered up to the defendant respondent;
7. the other chattels in which the defendant/respondent is entitled to a share are to be valued and the proceeds of sale divided equally between the parties after deduction of all costs incidental to the sale.
8. costs of and incidental to these proceedings are to be borne by the plaintiff/applicant; and
9. there is liberty to apply to the Court for any further order to give effect to this judgment.