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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2003 HCV 01574.

BETWEEN	JEAN GRANT	CLAIMANT
AND	RYLON GRANT	DEFENDANT

Mrs. Marjorie E. Shaw-Currie for Claimant.

Debayo A. Adedipe for Defendant.

Heard: 14th April 2005, 8th July 2005 and 26th January 2006

Campbell, J

1. The parties, Jamaican nationals, who resided and were married in New York on the 12th November 1989. They had co-habited since 1976 on what the wife described as "on and off" basis. In 1998 negotiations were started for the purchase of 92 Southsea Park, Whitehouse in the parish of Westmoreland. On the 8th January 1999 the property was transferred in the joint-names of the parties for a consideration of US$120,000.00.

It appears that the marriage had been in trouble from June 1996, when an argument between the parties resulted in the husband being arrested and criminal charges brought against him. The house was purchased during what was described as "a brief period of reconciliation between 1998 and 2001."

2. At the time of purchase, the wife was a retired nurse, then aged 58 years and the husband, a retired mechanic, 59, were in receipt of disability benefits and social security payments. The wife had received lump-sum payments in respect of her retirement and disability. The husband denied having applied for lump-sum payments, but was in receipt of monthly disability payments. The wife describes her husband as being financially unreliable, and recounts that in respect of the matrimonial home in New York, when asked to contribute to the first mortgage payment he had said, "Don't bother me, if you bother me too much, I will burn the house down."

3. The wife has applied for orders that the legal interest in the premises be portioned, and declarations that she is entitled to all the legal interest in the premises or alternatively to 80% of the property and the husband to 20%, and consequential orders for valuation and sale of the property.

Joint- Account

4. In 1996 they had a joint account set up to pay the utility bills. The account, 302 113 7777 at Chase Manhattan, New York, was first solely used by the husband until the house in Jamaica was bought. The wife testified that she would deposit $400; when it was time to pay a bill, the monies would be gone. He would use it for his personal business. She quotes him as saying of money, "I spend it faster than I get it."

5. She said she worked two jobs as a registered nurse to pay the mortgage on the matrimonial home, the household expenses and taking care of herself. She would remain up to sixteen hours per day on weekdays at the hospital, and still work on weekends. She testified that despite her efforts she saw one day a foreclosure notice on her door. She earned $80,000.00 per annum, he earned $30,000.00. I find that prior to the acquisition of the property the account was solely used by the husband; it was only after the payment of the $60,000.00 down payment that deposits were made by the wife into account 302 113 7777.

6. Cheques drawn on the joint account by each party are deemed to have been done so with the authority of the other party. Each can draw on that account not only for his sole benefit but for the benefit of both jointly. In **National Provincial Bank Ltd. v Bishop and others, (1965) 1 All E.R. 248** where the function of a joint account which was "fed by dividends on shares and sales of investment owned by the husband and wife separately, and they drew on the account at will to pay expenses."

Stamp J. said at page 252, letters e – g.

> "What is purchased is not to be regarded as purchased out of a fund belonging to the spouses in the proportions in which they contribute to the

> account or in equal portions, but out of a pool or fund of which they were, at law and in equity, joint tenants. **It also follows that if one of the spouses draws on the account to make a purchase in the joint names of the spouses, the property purchased, since it is purchased in the joint names, is prima facie, joint property and there is no equity to displace the joint legal ownership**. There is, in my judgment, no room for any presumption which would constitute the joint holders as trustee for the parties in equal or some other shares. That this the law is, I think an inescapable conclusion from the judgment of Pearson, j, in Re Young, Tyre v Sullivan (1) which, so far as I am aware, has never been doubted, and from the judgment of Diplock, j, in Gage v King." (emphasis mine)

7. Counsel for the wife relied on Lord Denning, dictum in **Hesteltine v Hesteltine** (1971) 1 All ER 2, where at page 956, he said;

> "…**there are … cases where one party provides all the money in the joint account and it is only opened and used as a matter of convenience of administration. In such cases, if the marriage breaks down, the monies belong to the one who provided them. So do any investments made with the money.**"

This joint account falls within the **Hesteline v Hesteline** category. The account was opened to manage the payment of the utility bills. The wife said that until she deposited the $60,000.00 the account was used solely by the husband. Subsequent to her deposit, there is no evidence adduced to support the husband's claim to have made deposits to the account which

could have gone towards the down payment for the house. The wife provided all the funds that went into the deposit. The marriage at the time was unstable and the wife had had the experience of what she claims was the husband's financial unreliability.

Was there an agreement?

8. The wife testified that she paid one half of the purchase price of the property. This payment, according to her, was pursuant to an agreement with her husband that had first contemplated a cash purchase of the house. She said her husband had agreed that the balance of the purchase price would be secured by mortgage from Victoria Mutual Building Society (VMBS), which would be discharged solely from the husband's anticipated lump-sum disability payments. The payment had represented an accumulation of the first payment of her Social Security disability benefit, her state benefits, pensions benefits and retirement fund. She paid an amount of US$60,000.00, representing her half of the purchase price.

9. The husband denies that the wife contributed the entire down payment and says that the down payment was contributed to equally by both parties from their pooled resources. He also denies that there was an agreement that the remaining half of the purchase price would be discharged solely by him, or that it was his responsibility to discharge the VMBS mortgage. He states

that the wife was also obliged to make monthly payments towards discharging the mortgage.

10. The parties were divorcees at the time of their marriage to each other. They had recently reconciled after a separation. Their experience, age, the fact they were retirees and the unstable nature of the marriage would support the wife's version that the agreement was for the parties to contribute equally to the purchase. The parties' evidence conflict as to when and how the respective contributions were to be made.

11. There is no agreement between the parties as to contributions of each and the consequent share as a result of those contributions. There is no express agreement or any agreement for that matter.

Forte, JA dictum in Forrest v Forrest SCCA #78/83 is apposite;

> "Where therefore, there has been an express agreement between the parties the court has no power to alter their respective rights in the property. Where there is no express agreement the court is entitled to determine from the conduct and contribution of the parties, what was their common intention at the time of the acquisition of the property."

Did the husband contribute to the down payment of $60,000.00?

12. The defendant was unable to substantiate the payments he claimed to have made. He admitted that he had filed a petition to be declared bankrupt in 1996 and was discharged of his bankruptcy on the 25th August 2000. He

had omitted to mention his bankruptcy in his witness statement. He admitted that he had to make Court ordered payments that amounted to $1600.00, from his disability payments. He refinanced his mortgage on the matrimonial home to pay off his outstanding debts and to discharge the bankruptcy. After the refinancing, his mortgage payment was approximately US$2000.00 per month. His obligation with VMBS was concurrent with his refinanced mortgage obligations. Under cross-examination, he was unable to say with any degree of certainty "it is possible" that he had ever made any lodgements to the joint account. He had no documentary support and he appeared vague and uncertain in his testimony.

13. The evidence of the defendant as to the contribution was unworthy of belief, he was unable to put forward any credible evidence to support his claim that he contributed to the down payment. He hinges his claim for the deposit on two specific sums along with a general claim from the joint-account. (a) He claims to have contributed the sum of $7,000.00 earned from a sale of a repaired motorcar. He does not claim to have deposited this to the joint account nor does he claim to have given it to his wife. He has adduced no evidence to show how this sum would have become part of the down-payment. His wife has testified that no sooner he obtained those funds he left for Jamaica. (b) The second sum which he claimed constituted a part of

the down payment was a sum of $20,000.00 he obtained as a result of a medical claim. Again, he did not say that this sum was placed in the joint account. He alleges that his wife collected this sum, the wife testified that legal fees were extracted from the amount, her husband collected $13,000 and she collected approximately $4,000.00. There were no specific amounts indicated as coming from the joint-account.

14. There were several illustrations given by the wife of the husband's inability to make any contribution to the down-payment of $60,000.00. She testified to having to facilitate the burial of both his parents by way of loans to him. When her mother died she had to pay his airfare to allow him to attend the funeral of her mother. Bearing in mind the cultural significance of the funeral, particularly of ones parents, I find these are compelling indicators of his means. The income from the auto shop that he claimed he had was unstable and inconsistent.

Victoria Mutual Building Society Mortgage

What were the parties' contribution?

16. The husband claims to have paid $850 of the monthly mortgage of $1500.00. He also claims to have paid the mortgage in its entirety for one whole year. The wife testified that she did pay $1000.00 for several months. In addition she had to clear up several months arrears amounting to

$5,500.00. There is no dispute that the parties both contributed substantially to the mortgage payments. The contributions to discharge the mortgage were equal as between the parties.

From the conduct and the contributions of the parties, I presume the common intention at the time of acquisition of the property to be an equal division of the portion represented by the VMBS mortgage. The wife was solely responsible for the down payment. The husband made no contribution to the down payment and contributed one half to the payment of the VMBS mortgage. The wife is therefore entitled to seventy-five percent of the beneficial interest in the property. The husband is entitled to twenty-five percent in the beneficial interest of the property known as 92 Southsea Park, Whitehouse Westmoreland.

Repairs

17. The husband has contended that he has expended US$57,000.00 on repairs effected to the property. The source of these funds has not been satisfactorily explained. I have great difficulty in accepting that within six months of the mortgage applications, he was able to effect repairs amounting to the sum claimed. However, the wife did admit that he had departed for Jamaica on receipt of $13,000.00 from a medical claim. I am therefore of the view that those funds provided the source of the repairs. There was no

denying that repairs were effected on the property, the sum expended was the point of contention. The wife has also said that he had made direct contribution of about $4,500.00. I therefore make an award of US$17,500.00, which is recoverable as an expenditure on the property that has improved its value.

In **Forrest v Forrest** (supra), the court in applying **Edmonson v Edomson**, had this to say;

> "In my view, in absence of evidence as to an agreement either expressed or implied between the parties to vary the original beneficial interest, as was clearly in the intention of the parties at the time of the acquisition, the court can do nothing else but give effect to what was the common intention of the parties.
>
> There being no such evidence in this case, the court cannot vary the beneficial interest of the parties based on mortgage payments being paid by one of the parties. However, the wife would be entitled to recover the share of the mortgage arrears payment, to which the husband would have been liable to pay, that is, 50 percent therefore.

And at page 19, Wolfe, J.A;

> "Once the interests of the parties are defined at the time of acquisition, it is my view that the unilateral action of one party cannot defeat or diminish the proportions in which the parties hold the property. The payment to redeem the mortgage cannot, therefore, diminish or increase the proportions in which the parties intended to hold at the time of

> acquisition. In redemption of the mortgage, the respondent must be regarded as having made a loan to the appellant to the extent of the proportion of his interest in the property. That amount is a debt recoverable on the order for accounts to be taken, made by the judge."

18. The Court makes the following declarations:

1) That the legal interest in 92 Southsea Park, Whitehouse in the parish of Westmoreland is hereby severed.

2) The premises registered at Vol. 1196 Folio 843 of the Register Book of Titles is owned by the Claimant and the Defendant in the proportion of seventy-five, twenty-five percent respectively.

3) That the premises be valued by a valuator agreed upon by both parties or by the Registrar of the Supreme Court in absence of such agreement and that the cost of the valuation be shared between the Claimant and the Defendant alternatively, a valuation be agreed upon by the parties.

4) That the premises be sold and the net proceeds of sale be distributed pursuant to the Declaration herein made.

5) The Registrar of the Supreme Court be empowered to sign any and all documents to effect a registrable transfer if either of the parties is unable or unwilling to do so.

6) That the Defendant is entitled to recover the sum of US$17,500.00 from the Claimant for repairs effected on the premises.

7) Each of the parties bear his or her own costs.