

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E403 OF 2000

BETWEEN JUDITH NEWMAN APPLICANT
A N D NIGEL NEWMAN RESPONDENT

Mrs. J. Samuels Brown for Applicant

Miss Saverna Chambers for Respondent.

Heard: November 22 & 29, 2004
February 8 & 22, 2005

Coram: Harris, J.

The applicant seeks a declaration that she is entitled to an interest in property known as 7 Mandela Drive, Temple Hall, registered at Volume 1213 Folio 626 and to certain consequential orders also.

The property was purchased by funds supplied by the Respondent. He is recorded as the sole registered proprietor on the Certificate of Title.

The parties met and formed a relationship in 1987. At that time, the Applicant was a 17 year old schoolgirl and the Respondent a 20 year old apprentice seaman. They lived in a common law relationship from or about February 1990 until October 12, 1991 when they got married.

It is the Applicant's evidence that sometime after the relationship commenced, she informed the Respondent that she was not prepared to continue the relationship unless they were married and moved into their own home. The Respondent proposed marriage and told her he would purchase a home for them. After the house was bought, she supervised its maintenance, paid for the grilling of a window and purchased a water heater.

The Respondent declared that at the time he met the applicant he had already made a decision to purchase a home and had viewed a number of properties. He finally decided on 7 Mandela Drive. He further stated that his decision to marry the applicant was made subsequent to the acquisition of the home. This decision took place about 3 – 4 months before the marriage.

In order to determine whether the applicant has acquired a beneficial interest in 7 Mandela Drive, regard must be had to the equitable principles giving rise to the law of trust. In observance of the principles, Lord Diplock, in *Gissing v. Gissing* [1970] 2 ALL ER 780 at page 790 stated: -

“A resulting implied or constructive trust –and it is unnecessary for present purposes to distinguish between these three classes of trust – is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable

to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land”

Where there is no direct contribution by a claimant to the purchase price of the property, or where there is no express arrangement, or written agreement for the Claimant to share beneficially in the property, it must be established that there was a common intention between the parties that the Claimant should benefit and the Claimant acted upon it to his or her detriment.

In *Grant v. Edwards* 1 Ch 1986, 638 at page 64 Nourse L.J. stated:-

“In order to decide whether the plaintiff has a beneficial interest in 96, Hewitt Road we must climb again the familiar ground which slopes down from the twin peaks of Pettit v. Pettit [1970] A.C. 777 and Gissing v. Gissing [1971] A.C. 886. In a case such as the present, where there has been no written declaration or agreement, nor any direct provision by the plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property. If she can do that, equity will not allow the defendant to deny that interest and will construct a trust to give effect to it.”

It is the Applicant's contention that the property had been purchased in contemplation of the marriage between herself and the Respondent. The main issue therefore is, whether the property had been bought with a view to its securing continual provision for them during their joint lives, upon marriage.

Two questions arise from the foregoing. The first is whether there was something in the nature of a promise by the Respondent, or whether there was an arrangement or an understanding amounting to a common intention between the parties that the Applicant should acquire an interest in the property. If the answer is in the affirmative, the second question is whether the Applicant acted in the belief that she would acquire a share in the property and conducted herself in a manner detrimental to her.

There was no express agreement that the Applicant should share beneficially in the property. She issued an ultimatum to the Respondent by expressing not merely a reluctance, but an unwillingness to continue the relationship unless he married her and found a home for them. The primary issue therefore is whether as a consequence of her statement, the Respondent proposed marriage and led her to believe that she would have secured an interest in 7 Mandela Drive.

She asserted that the proposal of marriage had taken place between 1987 and 1989. Under cross-examination she appeared to be uncertain as to when this proposal had been made. She qualified her statement by asserting that she was not "100% sure" of the date. However, she declared that it took place before Mandela Drive was located.

It was also stated by her that the Respondent and herself were involved in the search for the property, which search began in 1989 and that it was located by way of an advertisement in the Daily Gleaner newspaper. This the Respondent has refuted. In my opinion, even if the Applicant had not been involved in locating the property, this in itself would not in any way affect her claim.

If the proposal had taken place in 1989 as the Applicant related, did the Respondent lead her to believe that she would have shared beneficially in the property? In paragraph 11 of her affidavit of September 28, 2000 she averred: -

'At the time of the purchase and when the documents were being finalized, I observed that my name was not being included as Co-owner. I enquired as to why this was so and was told that this was because I was not yet married to

him but it did not matter as once we were married the property would be half-mine.”

It is clear that the documents to which she referred related to 7 Mandela Drive. These documents would include an Agreement for sale and an Instrument of Transfer. She asserted that she observed that her name was excluded from the documents. However, in cross-examination she announced that while the Respondent and herself were waiting to see Miss Norma Linton, the attorney-at-law who was then acting on behalf of the Respondent, she inquired of him the reason for the exclusion of her name from the documents. His response was that they had different surnames and after marriage her name would have been automatically placed on the title. It is obvious that while they were waiting to see the attorney at law she had not yet seen the documents. Therefore, she would not have been in a position to have made the discovery which she said she had made.

The foregoing notwithstanding, if it is accepted that the Respondent had taken her to the property, showed it to her in 1989, proposed marriage in 1989 with the intention of purchasing the home to be used as the matrimonial home and assured her that it had been purchased for them jointly but at the time of purchase her name could not be recorded on the title as they were not yet married, these acts would be adequate in

establishing that there was a common intention for her to share beneficially in the property.

The inference therefore, would be that he led her to believe that she had an interest in the property. However, this in itself would be insufficient to create a beneficial trust in her favour. The acts arising from the Respondent's conduct would only amount to an unenforceable voluntary declaration of trust.

If, however, there was an arrangement, implicit or otherwise, between the parties, that the applicant should contribute her labour in respect of the property, she having not contributed financially towards its acquisition then such arrangement coupled with the Respondent's intention by his conduct, for her to take a share in the property, would then create a trust in her favour.

In order to succeed, the Applicant must establish that the Respondent, having led her to believe that she was entitled to a share in the property, she acted to her detriment. The authorities clearly illustrate that she should show that she had substantially contributed indirectly to 7 Mandela Drive on reliance of the common intention that she had a proprietary interest therein.

The Court is not entitled to infer a common intention simply because a wife supplies chattels for joint use in the matrimonial home. She must establish that her contributions were substantial enough to relieve the

Respondent from being saddled with expenditure, which he would have had to otherwise undertake. See *Gissing v Gissing* (supra).

The following cases cited by Mrs. Samuel-Brown also support the foregoing proposition - *Eves v. Eves* 1975 1 WLR 1338, *Grant v. Edwards* 1986, 1 Ch 638, *Hazell v. Hazell* 1972 1 WLR 301.

Eves v. Eves (supra) demonstrates that the acts relied on by Mrs. Eves as detrimental, were substantial, in that, the Plaintiff personally expended her labour in carrying out an enormous amount of work in the rehabilitation of a dirty dilapidated house and the garden and thereby relieved the defendant from undertaking expenses consequent on the repairs of the property.

Grant v. Edwards (supra) indicates that without substantial contribution made from the Plaintiff's earnings towards the household expenses, the defendant would have been unable to meet the mortgage payments for the property from his income.

Hazell v. Hazell shows that the wife's contribution to the household expenses were substantial and relieved the husband of the responsibility of bearing expenses which he would have otherwise borne.

In the case under review, the Respondent had always made provision for the household expenses. He paid the mortgage. He fully supported the

Applicant. He met all the required expenditure relating to the property. The Applicant said that she supervised the grilling of the house. The cost of the grilling was paid by the Respondent. It was the Respondent who made arrangements for the grilling to be done. The Applicant's brother painted the house free of cost. The paint was supplied by the respondent. It is clear that the Applicant expended neither money nor labour for the painting of the house nor for the grilling of the majority of the house. She only paid for the grilling of one window and she purchased a water heater.

The Applicant declared that she supervised the general maintenance of the house. This she would have done out of affection for the Respondent.

In my Judgment, the supervision of the grilling of the house, the grilling of one window, the purchasing of a water heater, the supervision of the maintenance of the house could not be recognized as substantial contributions which had released the Respondent from the liability of carrying out expenditure on the property or in the household. She had not acted to her detriment.

Mrs. Samuels Brown urged, among other things, that consequent on the discussions between the parties, the Respondent told the Applicant that he would purchase a house and relying on that promise she altered her status by virtue of the marriage. Before marriage, the Applicant was aware that her

name was not on the document of title to the property. Assuming that the Respondent had informed her that her name would have placed on the title after marriage, she took no steps to ensure that her name was recorded thereon. She was never induced into changing her status by marriage on the promise by the Respondent that he would have purchased the property for them. Consequently, it cannot be acknowledged that having changed her status by marriage, she acted to her detriment.

The Originating Summons is dismissed. No order as to costs.