

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

HIGH COURT CIVIL DIVISION

SUIT NO. E. 681 OF 2002

BETWEEN                                  LISA ANNETTE OFFICER                                  APPLICANT

A N D    LESLIE WILLIAM OFFICER                                  RESPONDENT

Gordon Steer instructed by Chambers, Bunny and Steer for Applicant

Keith N. Bishop for Respondent

**Heard: July 20, November 30, December 20, 2005 and May 22, 2006**

**Daye, J**

Mr. and Mrs. Officer marriage was dissolved on the 8<sup>th</sup> November 2002 having lasted eleven (11) years. They were married on the 3<sup>rd</sup> August, 1991. Their marriage produced no children.

Mr. Officer is a citizen of Kenya and Mrs. Officer a Jamaican who met each other in 1987. At that time they were both employed to Jamaica Packaging Industries, Kingston, Jamaica. They fell in love and got engaged in 1990. Their relationship was not all about the feelings and excitement surrounding the emotion of love. Together they applied their mind and thoughts to their future together and marriage.

Now that the marriage is at an end Mrs. Officer has applied under **Section 16** of the **Married Women's Property Act** to the court to determine her interest or share in ten (10) items of property acquired by the parties primarily during the marriage. The properties range from the matrimonial home, real estate, motor vehicles, furniture,

monies in joint savings local and foreign accounts and shares in companies. In fact Mrs. Officer in claiming 50% percent interest in each of the ten (10) items of property.

The couple have settled their dispute about six (6) of these items. The interest in the other four (4) items of property is what the court has to determine. They are:-

- (a) Monies in Barclays Bank PLC, Jersey, off shore checking account
- (b) Bank of America, Florida, U.S.A. checking account
- (c) Land Rover Discovery motor vehicle
- (d) Shares and director's loan in Automotive Power Limited.

Mrs. Officer rests her claim to the properties in question on a combination of factors. I summarize them as follows:-

- (a) a pre-marital agreement between herself and future husband to put their earnings into a joint savings for investment,
- (b) a pre-marital arrangement that she would contribute to the domestic or household expense while her husband would pay for rental, mortgage and save the balance of his income in a joint off shore saving account for their benefit.
- (c) Her contribution of services – consultancy, accounting and managerial to two companies formed by her husband,
- (d) Shares in the joint names of her and her husband and
- (e) Joint savings accounts in the joint names of herself and husband.

**Issue**

Does Mrs. Officer have an equity or 50% beneficial interest in:

- (i) the joint bank accounts held at Barclays Bank PLC, Jersey and Bank of America, Florida, U.S.A
- (ii) Land Rover Discovery motor vehicle
- (iii) shares jointly held by herself and her husband in Automotive Power Limited.
- (iv) directors' loan of J\$ 2million made to Automotive Power Ltd.

### **Means**

I find which is not in dispute that this couple was employed before and during marriage. They each earned separate income from their jobs.

Mrs. Officer is qualified. She hold a MBA in Marketing and Finance. Her employment history is:-

1987-1990 Jamaica Packages Industries  
 1991-1994 K.M.P.  
 1994-1999 Workers Savings & Loan Bank, Human Resource, Management  
 1999-2001 Bank of Nova Scotia, Human Resource, Management  
 2005-Present Cable and Wireless, Human Resource, Management

Her banking job provided the benefit of concessionary interest rates on loans.

Mr. Officer is an engineer. He provides consultancy to private foreign companies overseas doing business in the package industry in two Caribbean island.

His employment history is:-

1986 – engineer/management, Trinidad  
 1987- engineer/management, Jamaica Package Industry, Jamaica  
 1987-2001 consultant,

2001-present Manager, private company

His jobs provided the benefit that part of his salary was paid in an off shore banking account England. I draw the inference that it is reasonable that this couple qualified as they were and holding job with benefits would discuss and pool their resources for the benefit of their marriage including their matrimonial home and other investment.

### **The Law – Resulting Trust**

The statement of the law of resulting trust was set out by Forte, J.A. in **Azan v. Azan** [1988] 25 J.L.R. 301 at 302, paragraph E to I. It is as follows:-

“Any claim to a beneficial interest is land by a person whether spouse or stranger in whom the legal estate is

Trustee on trust to give effect to the beneficial interest of the claimant as cestue que trust.....”

The authorities show that the claimant seeking a beneficial interest must demonstrate that:-

- (a) there was a common intention that to grant a beneficial interest to claimant,
- (b) the claimant acted to his/her detriment on the basis of the common intention,
- (c) there was an express agreement to grant beneficial interest,
- (d) Implied Agreement, in absence of express agreement, deduced from words or conduct to grant beneficial interest,

- (e) Substantial contribution by the claimant to acquisition, operation or maintenance of property referable to common intention to have beneficial interest in property.

Where one party claiming a beneficial interest is married, Forte, J.A. explained in

**Azan's case:**

“The determination of the beneficial interest in property of one party to marriage where the property is registered in the name of the other party, is in most cases difficult to resolve because of the nature of the relationship between husband and wife which in the days when property is acquired usually enjoy a degree of trust which resulted in the acceptance of verbal or implied promises made without consideration of any possible dispute arising thereafter. In spite of this, the law does not make any presumption of beneficial interest because of the marital relationship, and therefore the party in whom the legal estate is not vested must resort to the law of trust to establish such beneficial interest (ibid. p.306, paragraphs F-G)

**Law – Joint Account**

The law governing joint account in the names of husband and wife was stated by Stamp, J. in **National Provincial Bank Ltd. v. Bishop & Others** [1965] 1 All E.R. 249 at 252 paragraphs D-F. This principle was adopted and applied by Forte J.A. in **Azan** (supra) and is stated in these terms:

“Now, when a husband and wife open a joint account at a bank in terms that cheque may be drawn on the account by either of them, in my judgment, in the absence of facts or circumstances which indicate that the account was intended or kept for a limited purpose each spouse can draw on it not only for the benefit of both spouse but for his or her own benefit. Each has the authority of the other, and in my judgment, if one of the spouse purchase a chattel for his own benefit or investment in his or her own name that chattel or investment belongs to the person in whose name it is purchased or invested for there is in such case, in my judgment, no equity in the other spouse to displace the legal ownership of the one in whose name the investment is purchased. What

is purchased is not to be regarded as purchased out of funds belonging to the spouse in the proportion in which they contribute to the account or in equal proportions, but out of a pool of funds of which they were, at law and in equity joint tenants. It also follows that if one of the spouse draw on the account to make a purchase in joint names, it is prime facia joint property and there is no equity to displace the joint legal ownership. There is in my judgment no room for any presumption which constitute the joint holders as trustee for the parties in equal or some other shares. This is the law”

Where a joint account is in existence it was decided on the authority of **Marshall v. Crutwell** (1875) L.R. 20 Eq. 328 that the court must examine the circumstances in relation to the joint account in order to ascertain the reason for its existence and to see whether it existed for some specific or limited purpose. It was held on the facts of this case it was clear from the circumstances of the case that the joint account was open for a specific purpose, namely, in order to enable the household to be managed by the wife during the husband’s illness. The court pointed out, in addition, that the surrounding circumstances should be regarded so as to decide whether a transfer into the name of the wife is a gift or whether a resulting trust is intended. The same consideration arise if there is a transfer to a stranger. The surrounding circumstances must be taken into account so as to find out whether or not the stranger is to hold on a resulting trust.

When either a husband or wife takes fund from a joint account and use it to purchase investment in one or the other name solely when it is agreed that that the investment was to be their savings then the investment is held by either the husband or wife on trust for the husband and wife in equal shares and not held by the husband or wife for themselves in the shares in which each contributed to the monies in the joint account. Stamp, J. explained the ratio decided in **Jones v. Maynard** [1950] 1 All E.R.

802 **In Re Bishop**[1965] **All E.R. 249** Forte J.A. accepted in Azan's case how **Jones v. Maynard** was distinguished.

### Presumption of Advancement

It is the law that where a husband purchases property in the joint names of himself and his wife a gift is presumed in the absence of evidence to the contrary. This is what is called the presumption of advancement. The presumption of a gift by husband to a wife where he purchases property in their joint names is also applicable when a husband places or adds his wife's name to a joint bank account. There is no such presumption in favour of a woman cohabiting with a male partner. {**Austin v. Austin**} [1978] 31 W.I.R. and **Geddes v. Stockert S.C.C.A 98 of 1995**, dated June 18, 1997

The basis and the nature of presumptions of advancement or gift was examined and explained by Patterson, J.A. in **Levy v. Levy** S.C.C.A 93/94, delivered May 1, 1998. He adopted the dicta in **Harris v. Harris** [1982] 19 J.L.R. 319 at 327 as the basis of the presumption.

“The presumption of advancement is not based on contribution to the purchase price, it is raised by implication of law as being consistent with an intention by a husband to satisfy an equitable obligation to support or make provision for a wife or a child or a person in relation to whom he stands in loco parentis”

[Per. Campbell, J.A. (Ag.) ]. Patterson J.A. identified five features of the presumption of advancement in Levy's case. They are:-

- (i) It is weakened in modern times in the circumstances where a wife is not economically dependent on her husband,

- (ii) it is no more than a circumstance of evidence which may rebut the presumption of resulting trust i.e. trust resulting to the husband if he is the provider of the money [**Pettit v. Pettit**][1970] A.C. at 814
- (iii) it is not an immutable rule to be applied blindly where there is no direct evidence as to the common intention of the spouses. It is rather a guide to be followed by the court in an appropriate case when it searches for the intention which ought, in the absence of evidence, be imputed to the parties.  
  
(*Neo Tai Kin v. Foo Stie Wah (M.W.)*)  
  
See Carey, J.A. **Lynch v. Lynch S.C.C.A.** 36/89 delivered February 4, 1990.
- (iv) it can be rebutted by evidence to the contrary. A resulting trust will arise in favour of the party who successfully rebuts the presumption
- (v) the onus to rebut the presumption lies on the spouses or party against whom it applies.

### **Evidence/Findings of Facts**

Mrs. Lisa Officer in her evidence on affidavit testifies prior to her marriage to Mr. Officer they both discussed:-

- (a) to own land equally, to build own home, jointly purchase lot with title in joint names,
- (b) several plans about their future and about opening business together, (Affidavit January 28, 2004, paragraph 6)



- (c) opened a joint savings account, saved in this account, invested the money in this account in certificate of deposit to get better interest rates, (witness statement, January 28, 2004, paragraph 10)
- (d) opened a joint account in Florida, U.S.A. and saved in this account
- (e) agreed she would pay all household expenses except utilities and pay mortgage which she did
- (f) agreed that Mr. Office income would be saved for their future, as part of their future. That a joint account was opened at Barclay's Bank P.L.C. Jersey, United Kingdom for this purpose.

These pre-marital discussions she states took place after her engagement to Mr. Officer in 1990. She was then employed to Bank of Nova Scotia as Assistant Manager, Human Resource. It is reasonable to infer, on her account, that more of these discussions took place through 1990 until they got married on 3<sup>rd</sup> August, 1991. Mrs. Officer testifies there was not one specific discussion but several and these reinforced by further discussions after the marriage.

Mr. Officer agreed in his affidavit of response dated 1<sup>st</sup> October 2004 that he had pre-marital discussions about purchasing a lot to build a dream matrimonial home for them both. He agrees that Lot 7 West Norbrook Heights, Kingston 8 was purchased prior to his marriage in August 1991. He agrees that at the time of purchase it was the intention of Mrs. Officer and himself that they should own the land equally. However, he says Mrs. Officer did not contribute any money for the purchase of the land. A valuation report of the lot which is agreed and admitted as part of the evidence, indicate the title is in the names of Mr. and Mrs. Officer as joint tenants. Mrs. Officer did say in her

affidavit that she and her husband both put up money for the lot. Later in cross-examination she says he did not put a cent to the purchase of the lot.

The interest of the parties in this lot is not in issue. The acquisition of this lot is relevant to the issue of pre marital discussions and agreement between this couple about ownership of properties for their future. Also it is relevant whether there was any express common intention as to how properties would be shared. Suffice to say that the court find that the first real property acquired there was pre-marital discussions leading to an express oral agreement reflecting the common intention that this lot should be held joint legally and beneficially for the couple. Although Mrs. Officer was not yet married when the lot was jointly transferred into the names she was in contemplation of marriage and acquiring as a matrimonial home. This lot was a gift to his future wife. This lot in the name of Lisa Officer could properly fall as a presumption of advancement or gift to her. It is in her married name not maiden name. There is nothing in the evidence to rebut this presumption.

As there was pre-marital discussions, agreement and conduct about jointly owning a house so that was pre-marital discussions and agreement about saving account. But before parting with joint conduct about home it is necessary to note that as late as February 2001 after the parties had separated Mr. Officer transferred the title of town house apartment 6 Hopefield Road into the names of himself and Mrs. Officer as joint tenants. He had paid the deposit for the purchase of this land, which there previously rented, and she obtained a concessionary mortgage for it from her employer, Bank of Nova Scotia at the time. The course of conduct disclose the couple was pursuing an agreement when they joint pooled their efforts in cash or benefit toward purchase of a

house. I find that the action refer to and confirm the existence of an agreement from the time the couple engaged to be married to jointly acquire property for their future. I am of the view that these two transactions show the commencement of a pattern of this couple jointly acting together for their future. Did this extend to savings and investment?.

### **Joint Savings Account**

Mrs. Officer deponed that before marriage she and her husband opened and saved in an account presumably a local account. Then they would later use these savings to invest in certificate of deposits to get a larger interest rate. Also she said prior to marriage they opened and saved in a foreign savings account in Florida, U.S.A. Mr. Officer response is that he can't recall the local account and he can only recall an account in Florida, U.S.A. at Barnett Bank at the Miami International Airport. Although Mrs. Officer has not given any details such as the type of accounts, their number and the banks they were held, I nonetheless accept her evidence that these accounts existed. I also accept on a balance of probability that the purpose of these accounts was for the couple's joint savings.

### **Barclay's Bank PLC. Jersey Channel Island Account**

This account is described as an high interest cheque account or an off shore account. It was opened by Mr. Officer in 1986 prior to his marriage. It facilitated Mr. Officer's employer to pay part of his salary outside the island he was working. Copies statement of this account which is part of Exhibit 'LOI'', for period January 1998 to October 2001 shows that the source of credit was payment of salary, payment of consultancy fee, interest and private company.

In February 1998 after marriage Mrs. Officer's name was added to this account. It became a joint account as of that date. Mr. Officer depones that Mrs. Officer's name was added for convenience. He repeats this claim in cross-examination and adds that Mrs. Officer does not have any beneficial interest in the account. Mrs. Officer claims a beneficial interest to this account on the basis that it was jointly opened. She says there was a pre-marital agreement that she would be responsible for household expenses excluding rent and utilities. A portion of Mr. Officer's salary was paid off share was supposed to be their joint savings in the Jersey account. The evidence does not support Mrs. Officer that the account was opened jointly and at the time of marriage nor does the history of the account show any payment made by Mrs. Officer or any additional payment which was different from when Mr. Officer opened the account prior to marriage. Therefore I do not find any evidential base to support a claim that Mrs. Officer is beneficially entitled to this account by indirect or direct substantial contribution to give rise to an equity due to a resulting trust.

However, her name was added to the account in 1998. Mr. Officer acknowledged that she had permission to draw on the account if she wanted to. She could go to the Bank directly in England and withdraw any or all the funds in the account, even though she made no lodgement to this account. There is no evidence that when the account became joint in 1998 it was for a limited purpose as explained by Stamp, J. in **Re Bishop**. Just to assert that Mrs. Officer's name was added to the account for convenience does not prove that fact. When I look at the conduct and pattern of behaviour of Mr. Officer in relation to the two other properties that he added Mr. Officer's name to the title I find that

he intended a gift to his wife of this account. (**See Levy v. Levy Supra**). I hold she is therefore entitled to one half of balance standing to this account.

**Bank of America Account**

Between 2000 and 2002 a chequing account was opened in Mr. and Mrs. Officer's name at Bank of America, Tampa, Florida, U.S.A. Mr. Officer depones, which is not disputed, that the purpose of the account was to facilitate the operations of Sealapia (Forms) Jamaica Limited which was incorporated in Jamaica.

The company was formed around 2000 to engage in business of growing tilapia or fresh water fish in sea water on land leased in the parish of Saint Mary. Later the company grew fresh water ornamental fish for export. The Original subscriber and shareholder of this company was Mr. Officer and a partner. Mrs. Officer was named as director. The original partner left the business. Then Mr. Officer bought that partner's share. He increased the share capital of the company and issue shares to new shareholders which included shares jointly to his wife and himself, jointly to his sister and brother-in-law and jointly to his wife's sister and husband. Shares were issued separately in Mr. Officer sole name. He was therefore the majority shareholder and was the managing director.

Funds in the formation of the then company came from Barclays PLC Jersey account. Mr. Officer contends the monies he withdraw from this account and used for this investment he was solely beneficially entitled to. Mr. Officer contend the funds taken from this account was their joint savings and therefore she is equally beneficially, entitled to any investment made in her husband's name with these funds. I reiterate the court's finding that this account did not become a joint account until 1998. Mrs. Officer

can not relying on it to obtain an equity or beneficial interest. However, she did obtain a legal and beneficial interest in this account post 1998 on the basis of a presumption of advancement. So, on the principle of *Re Bishop* (supra) if Mr. Officer withdraw funds and use it for investment in his name alone then the investment belong to him alone.

Additionally Mrs. Officer claim an equity or to be beneficially entitled equally in Mr. Officer original share in Sealapia Farms Limited on the basis of her contribution and service to the company at its formation and during its operation. Her evidence in first affidavit is as follows:-

“21. That other than using our money to start and operate the company, I had put in time, personal expenses and negotiations with Jampro, National Investment Bank of Jamaica and did business plans and we attend trade shows and met suppliers together”.

In cross-examination she say that:-

“I agree all the invoice for Salapia Farm Limited was done on our computer at home. Yes I agree I did all the invoices. When Mr. Officer left the matrimonial home he did not take the computer with him but he took all the paper work”.

At this point I note that Mr. Officer was qualified in Market and Finance. She performed unpaid work that otherwise would have to be remunerated.

The work described by Mrs. Officer which is not challenged would amount to substantial contribution and service by a wife referable to this farm which was an investment. This is indication of a presumed common intention by the couple that wife, Mrs. Officer should have equity or beneficial interest in the farm. Mrs. Officer contribution in technical services is similar to Mrs. Chin in *Chin v. Chin* S.C.C.A. 115/96 delivered May 10, 1991. In the latter case the wife obtain an equity and beneficial

in the company of her husband for among other things for her substantial contribution and services.

On this ground Mrs. Officer would have an equal beneficial interest in her husband original share in the farm. Also she jointly and equally held shares issued to her after the original partners were bought out. This means that funds from sales and earnings from the export of fish from Sealapia Farms Limited lodged on credit to the Bank of America account was joint funds. The money in the account was this couple pooled resources. Each of them could withdraw from this required account in their joint names. They want joint tenant of the balance on credit standing to this account (Re Bishop, Supra) in law and equity. There is no equity to displace the joint legal ownership.

#### **Land Rover Discovery Motor Vehicle**

This vehicle was purchased in 1997 in a third party's name. There are receipts in the sole name of Mr. Lester Officer for payment of this vehicle. The receipts are for the sum J\$200,000.00, £4130.00 and £12,400.34 to John Crooks Limited and its subsidiary Kingston Industrial Garage. Mr. Officer claims to be solely beneficially entitled to this vehicle. He said he withdraw funds from his Barclays Bank PLC, Jersey Account to assist with the purchase of the Land rover. His contention is that he was the sole provider of this account and item purchased from this account was his salary. Mrs. Officer originally claim one-half share in this vehicle on the basis the funds to purchase the vehicle came from their joint savings in the Barclay's Jersey Account. In 1997 the Barclay's Account was salary in Mr. Officer's name. She can not rely on the fact that she was beneficiary entitled to this account or a joint account in 1997.

Both Mr. Officer and Mrs. Officer agree however that she made direct financial contribution to the purchase of their vehicle from a Workers Savings and Loan Bank Account. When she was employed between 1994 -1998 I hold this account was in their joint names. Two of the receipts of payment by Mr. Officer shows Workers Savings and Loan Bank cheque was used. It was agreed most of the payment for their vehicle came from Barclays Bank PLC. Jersey. Mrs. Officer can not quantify how much money was contributed from the Workers Savings & Loan Bank for the purchase of the vehicle. Mr. Officer claims whatever money came from the Workers Savings Loan Bank was paid back to his wife and he exhibit lodgements \$150,000.00, \$250,000.00 and \$200,000.00 to support his claim. It has not been establish on a balance of probability that these sums which Mr. Officer admit she received were payment back for her direct contribution to the Land rover.

On the principle in Azan, Mrs. Officer has establish an equity or beneficial interest in the Landrover as a result of direct financial contribution to its purchase. Her share or beneficial interest is not necessarily one-half share. It is clear he contribution is less that Mrs. Officer. To quantify her share in this vehicle, I rely on the “rough and ready” method of evaluation applied by Rattray P. in Pinnock v. Pinnock S.C.C.A 52/15 and Carey, J.A in Joseph v. Joseph R.M.C.A 13/84 to quantify the wife’s share in those cases. I hold Mrs. Officer has one-quarter or twenty-five percent (25%) interest in the Landrover motor vehicle.

#### **Shares and Directors Loan in Automotive Power Ltd.**

Automotive Power Limited is a company that distributes and market batteries. It has it first directors meeting on the 12<sup>th</sup> October, 2000 which confirmed that Mr. Leslie



Officer as one of the five (5) directors who originally subscribed to the Memorandum of Association of company. Mr. Officer was present at that meeting. Mr. Leslie Officer was elected as chairman of the board of directors. The minutes of the meeting dated November 10, 2000 signed by Leslie Officer disclosed among things.

**Name of Shareholders**

**Shareholding**

Leslie and Lisa Officer

15%

**Current Loan as of October 12, 2000**

Leslie and Lisa Officer

\$2,260,600.00

Mrs. Officer depones that money for the loan to the company was withdrawn from their joint account at Barclays Bank PLC, Jersey. The sum she says was £3,500.00. The copy statement account for October 2000 shows a withdraw of this sum.

Mr. Officer admits in his first affidavit that the money loaned to the company came from his Barclay Bank PLC, Jersey Account. He reports that this account was his account solely and for his sole benefit. He describe this \$2,000,000.00 as an investment. He said it was returned to him prior to his separation and divorce.

The Court has already ruled that the Barclay Bank PLC, Jersey Account became a joint account in the name of Leslie and Lisa Officer after February 1998. This was on the basis of a presumption of advancement as gift. Any money withdraw from this Account after 1998, and in particular 2000, and used to make and investment in the joint names of Leslie and Lisa Officer would be held prima facia as joint tenants. (In Re Bishop, supra) Mrs. Officer would therefore be entitled to one half of the \$2,000,000.00.

She would be also entitled to 50% of the share, i.e 15% held in Automotive Power Limited as recorded in the first minutes of the company. The reason is that Mr. Officer withdraw money in 2000 from Barclay's Bank PLC, Jersey to purchase shares in Automotive Power Limited. I do not accept Mr. Officer's explanation in cross-examination that that was an intention that Mrs. Officer should jointly hold shares with him in the company even though this was proposed in the directors meeting. No private discussion can countermand the clear intention of the directors meeting that his wife should hold 15% share in the company with him. Neither do I accept the submission on his behalf that no shares or share certificate was issued subsequently by the company so any one could own any shares. What the court seeks to ascertain is the intention of the parties about the shares. Any failure to issue shares formally does not change the intention already ascertained.

I have considered the submission of the respondent that the couple had an agreement that each kept and operated separate local and foreign account, so any money taken from their separate account belong to the spouse solely. I also take into account the respondent argument that several certificate of deposit and unit trust investment were encashed by Mrs. Officer. I hold the proceed of these were used for the joint benefit of the couple and not to Mrs. Officer's sole use.

The expense of Mr. Officer incurred to pay medical bills for his sister or on behalf of Sealapia Farms (Jamaica) Limited do not negate the intention ascertained in relation \$2,000,000.00 Sealapia Farm (Jamaica) Limited when Mrs. Officer was added as a shareholder.

I hold that this couple approached their marriage thoughtfully and methodically. They planned and implemented their financial contribution to their future home. This resulted in the operating of joint savings and investment accounts before, after and during the marriage. Both parties had financial means, necessarily in equal proportion. However, they pooled their means to increase claim. Further, Mr. Officer's conduct of adding his wife's name to titles, joint account and shares gave raise to a presumption of advancement to her.