

In the Supreme Court

Before : Mr. Justice Vanderpump

Suit No. E. 128 of 1975

In the matter of the Married Women's Property Law

And

In the matter of Lot 19 Forrest Hills, Red Hills on the Belvedere Road in the parish of Saint Andrew comprised in Certificate of Title registered at Volume 386 Folio 39

And

In the matter of Lots 47 and 48 Cadastral No. 98 in the parish of Saint Hubert, Quebec, Canada

Originating Summons Trough vs. Trough

On: 21st, 22nd 23rd July, 4th, 5th, 8th, 9th December, 1975

J U D G M E N T

1. This plaintiff is a state registered nurse. The respondent is a registered medical practitioner. In the early 1960s they both met. They became friendly. They fell in love with each other. She had then two infant children, Audrey and Andre. The latter is now deceased.
2. In 1964, she left the Spanish Town Hospital and went to work instead at the Maimonides Hospital in Brooklyn, New York. She left those two children behind with her aunt. She was responsible for them and used to send \$80, \$100 a month regularly for their maintenance and support; this she considered one of her primary obligations (box).
3. As was to be expected these parties visited each other and exchanged letters. They decided to get married (8/W).
4. She wanted to acquire a piece of land for herself and build a house thereon, here in Jamaica, so in the latter part of 1965, she wrote to the defendant asking him to look out for a lot of land for her (9/W). This he denies (8/H).
5. Be that as it may, however, on Christmas eve of that very year, 1965, over the telephone, he told her about lot 19 Forrest Hills. He was seized with the idea that since they were planning to get married he would like to purchase this land for both of them and start building the matrimonial home thereon. He asked her to send £500, being one

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half of the deposit, and she agreed. The sale price was £2,050, (para 33/W).

6. On 30th December, 1965, a few days afterwards, he said in a letter " ..... with the coming of the New Year I foresee the maturation of our favourite plans ..... all my plans include you - never have I excluded you from any constructive idea that comes to me; let's say it's because I need your participation in every little effort of mine. " At page 4 thereof he describes the lot at Forrest Hills and goes on, " We got it for £2,050 which is quite a bargain as lands are going now. I spoke to my lawyer who agreed to lend me £1,000 (mortgage) if I could find £1,050. Yesterday I signed the contract and paid down £500. As soon as I get your letter of authorization I will collect £500 from the Building Society, add £50 to it and take it to the lawyer. Within 30 days we should be able to take possession. I propose to build our home on that piece of land ..... As soon as I have the statement of account I will let you know how everything is going. The other lot which I bought on Sunrise Crescent I might keep as a sort of collateral. " The underlinings are mine.

7. Defendant denies that by that he meant that the lot and house were to be jointly owned by them. He used the plural pronouns so as not to appear selfish! (35/H) He admitted speaking on the telephone to her on the Christmas Eve but denied telling her that he would like to purchase the land for both of them. He contends that on hearing of the downpayment of \$2,000 she offered to pay \$1,000 of it, which he accepted (36/H) and duly received. In cross-examination he denied asking her for this \$1,000.

8. On this aspect of the case, I find as a fact, as being the more probable, that on the Christmas Eve he did tell her that as they were planning to get married he would like to purchase the land for both of them and start building the matrimonial home thereon as also that he asked her for half the down payment on the land and she agreed. In his letter a few days later (para. 6 supra) he says in effect that his lawyer agreed to lend him £1,000 on mortgage if he could find what was the balance of £1,050 (to make up the purchase price of £2,050). So

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he promptly asks her for half of that balance, roughly £500 (or \$1000) to which he would add £50 to take to the lawyer. He had already paid his half.

9. In my view, "our favourite plans" in his letter in December 1965, following closely on his Christmas Eve telephone conversation (5 supra) refers unequivocally to the purchase of this lot and the building of the matrimonial home thereon by both of them jointly, her "participation" that he needs, being her contribution thereto direct and indirect.

10. In due course (18/1/67) she sends him \$3,000 U.S. and he uses some of it to discharge the mortgage on this land - he does not remember in the box if half or quarter. Although he did this he regarded this sum as a contribution in the construction of the building (40/H).

11. At the hearing plaintiff said that in this telephone conversation on that Christmas Eve of 1965, the understanding was that the land was to be in both their names. She was not present out here at the time of signing the documents so could not and did not sign them. The following year while here on vacation he told her to wait until she came home permanently. When she came home permanently in the following year he told her he would not be able to get a loan if her name was on the title (box). I accept her evidence on this point and find that there was such an understanding between them.

12. On that same day in January 1967, he writes again in the same vein, "If I get a good price for our lot say about £3,000 we should be able to purchase same (i.e. a suitable home) with what we have .. I hope to further considerably reduce the balance on the lot within a short time (the \$3,000 U.S. was then on the way to him, 10 supra) ..... after which I will negotiate re loan for our building or for purchasing our house as the case may be." He denies that the plural pronoun 'our' in the phrase 'our lot' and 'our building' meant to convey that they both jointly owned the lot or that she had an interest in the lot (39/H)! It merely referred to where they were going to live! In its full context and, bearing in mind the previous letter - 6 supra - the passage admits of only one interpretation, in

my view, namely, a joint enterprise to either build a house on the lot or sell it and purchase a suitable house elsewhere using the proceeds towards the purchase price. I so hold.

13. At paragraph 35 of her affidavit she says "Myself and defendant got married in August 1966 and I resided in the United States of America for another year and two-months to work and accumulate money to buy and build our house on the lot 19 Forrest Hills ..... I also had plans to go to school or a University but things did not work out as I got ill with ulcerated stomach." He denies that she stayed to work, it was to study (37/H). At paragraph 40 "I returned to New York at the end of July 1967 to continue working towards the building and our house." The underlinings are mine.

14. Between these two dates viz on February 1967 he writes, "We have however decided to make a great sacrifice which will eventually be to our benefit so please take heart ..... I know how difficult it is." Only the month before he had received money from her which he regarded as a contribution in the construction of the building (para. 10 supra) and had written about negotiating a loan for "our building" (12 supra). In the box she said the main reason for her remaining in New York, after marriage was to work towards building of the matrimonial home. She got about \$10,000 U. S. per annum at the hospital. In the box he agreed she could not earn that amount of money out here and that she had abandoned her studies. He did not think that she stayed on to work money for the building! I accept her on this and find that the great sacrifice referred to her remaining in New York to earn money to contribute to the construction of this building - that being part of the joint venture.

15. Defendant has not denied writing any of these letters to the plaintiff.

16. In 1966 they got married in New York. She stayed on to work money for the construction of the building as they had decided, although a great sacrifice (13 & 14 supra).

17. In 1967 she sends him \$3,000 U.S. which he regards as a contribution in the construction of the building 40/H. which indeed it is.

Later that same year she comes on a visit gives him, I accept, \$800 U.S. which he regards in the same light 42/H. Still later that same year she returned home permanently and pregnant.

18. His case, however, is that the lot and land are solely his and he never wanted ~~them~~ to be jointly owned (35/H). As a matter of fact, he never considered whether she should have an interest at all! The \$1,000 on the deposit was volunteered by her and when she did so it was not her money any longer (box). He regarded it as a gift it <sup>would</sup> seem! This I do not accept in the face of the overwhelming evidence to the contrary.

19. She brought with her for the house furniture, electrical appliances, fridge, stove, washing machine, stereo to the value of \$3,200, which I accept. They were bought out of her savings. These were indirect contributions to the construction of the house and I so find. This was in 1967.

20. In 1968, the baby was born in May and the house completed in October.

21. In 1969, she went to work. At paragraph 24 she says it was understood that while he paid the mortgage she would meet the bulk of the household expenses. She paid for all the bed linen, bought pots and pans and everything that the house needed such as curtains, drapes etc. She spent at least \$40 a week. He denies this (26/H).

22. She also carpeted the living and dining rooms for \$1,300 - he agrees.

23. She also spent money buying furniture locally for the house spending \$1,035, I accept. He agrees in principle.

24. Defendant agrees also that her contributions to the matrimonial home, the indirect were substantial. He would not agree, however, that she was doing her bit while he did his bit (box)!

25. In August 1967, in New York, she gave him \$1,249.53 U.S. in connection with the purchase of a motor car. According to her (41/H) this was to be a contribution towards the building fund. This he denies (43/H). I do not accept her on this.

26. At the hearing, she spoke of lending him £100 to pay some workmen just prior to moving in. This she did not expect him to account

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for, but now, apparently she does. This I decline to take into account in her favour.

27. The house cost approximately \$28,000 to build but he had no bills, receipts or anything like that to show as it was not necessary to keep them (box)! I accept this as a <sup>rough</sup> approximate figure although Mr. Carberry has sought to challenge it.

28. He paid \$15,000, approximately and got \$13,000 on mortgage. It was completed in October 1968 (45/H).

29. She paid \$3,040 (being \$3,000 and \$800 U.S. converted) less say \$1,000 to discharge half of mortgage on the land (10 supra) i.e. \$2,040 towards the construction of the building.

30. Her indirect contribution amounted to \$5,335 (paras. 19, 22, 23 supra). She also used her money for their joint benefit by paying at least \$20 a week for the house-keeping (20/W).

31. Apart from 29 and 30 supra I find as a fact that these parties contributed to the erection of this building by their joint efforts from the very beginning he by paying the mortgage instalments, taxes, light, telephone, water rates, insurance (25/H) while she bought furniture etc (19 supra).

32. The marriage started to deteriorate (14/W). In June 1973, defendant ceased having sexual relations with plaintiff and moved from the matrimonial bedroom (15/W. 16/H).

33. On 13th December, 1973, she lodged a Caveat against these premises then registered at Vol. 586 folio 39. I find that she did this as he had told her to get out of the house as he wanted to sell it (16/W); denied at 19/H.

34. On 17th June, 1975, she took out this Originating Summons to determine, inter alia, their respective interests in this property.

35. Here both spouses contributed towards the erection of the matrimonial home from the very outset. She directly and indirectly (17, 19 supra). He directly by borrowing money on Hitchen Street, and privately. It was built March to October 1968. Title taken in name of husband only (see hereon 11 supra).

36. I find that those contributions were made by them in pursuance

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of a joint enterprise (6, 8, 9, 11, 12 supra) with the common intention that both should share in the beneficial interest.

37. Plaintiff claims a half interest (50/W).

38. Defendant claims the whole subject to her financial contribution thereto with interest thereon (56/H).

39. The House of Lords in Gissing v. Gissing 1970 2 A.E.R. p. 780 have laid it down that there is no distinction to be drawn in law where a contributing spouse makes direct contributions towards the purchase of the matrimonial home and where he or she makes indirect contributions, although in the latter instance the relevant share in the beneficial interest is likely to be less easy to evaluate.

Lord Reid at p. 782 J. ibit and 783 a :

" It is perfectly true that where she does not make direct payments towards the purchase it is less easy to evaluate her share. If her payments are direct she gets a share proportionate to what she has paid. Otherwise there must be a more rough and ready evaluation. I agree that this does not mean that she would as a rule get a half share. I think that the high sounding brocard 'Equality is equity' has been misused. There will of course be cases where a half share is a reasonable estimation, but there will be many others where a fair estimate might be a tenth or a quarter or sometimes even more than a half. "

40. Lord Diplock at page 789 G ibid:

" Any claim to<sup>a</sup> beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based on the proposition that the person in whom the legal estate is vested holds it as trustee on trust to give the effect to the beneficial interest of the claimant as cestui que trust. The legal principles applicable to the claim are those of the English law of trusts and in particular, in the kind of dispute between spouses that comes before the courts, the law relating to the creation and operation of 'resulting, implied, or constructive trusts .....

p. 790a:

A resulting, implied or constructive 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 th. belief that by so acting he was acquiring a beneficial interest in the land. "

41. There is abundant evidence that this defendant by his words over the telephone (para. 5 supra) and by his conduct in writing letters to her such letters as he did (containing further words) (paras. 6 & 12) induced plaintiff to act to her detriment in that she sent him various

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sum of money towards the building (17 supra) and also bought things for the intended matrimonial home out of her savings (19 supra). This she did in the reasonable belief that by so doing she was acquiring a beneficial interest in the land, and I so hold. I therefore impute a trust in which defendant is to hold the premises for them both jointly and that a fair division in all the circumstances should be as to 2/3 to the husband and 1/3 to the wife (29,30 31 supra).

42. The addition to the house was provided solely by him - she made no contribution to that. I hold therefore that portion to be his. See Falconer 1970 3 A.E.R. 449, 450. The equity amounts to \$3,800 (i.e. \$9,000 less \$5,200 owing (52/H)). This addition was commenced prior to his being informed of her caveat being lodged.

43. Mr. Muirhead has submitted that I should regard her as a mere creditor because at one time she demanded from defendant the sum of \$5,300 being the amount of money calculated by her as having been paid in this venture by her. Later, on being offered \$4,000 by him she changed her mind and wanted instead \$15,000 as a downpayment on a townhouse which if she had got she would have abandoned all claims to this house. Andre had just died, she was undoubtedly in an upset state of mind as a consequence. She wanted a reconciliation with her husband which he refused outright. So she wanted OUT. I regard this episode as a mere storm in the tea-cup and not affecting the legal position.

44. Mr. Muirhead has urged on me that I should give the husband the benefit of the mortgage of \$13,000 but this I decline to do. See Ulrich and anor. 1968 1 W.L.R. 180, 186. I do not regard this sum as a cash contribution by him. He was relying on Cowcher.

45. I therefore answer the questions posed as follows:

1. As to lot 19 Forrest Hills husband 2/3, wife 1/3 beneficial interest. As to lots 47 & 48 Cadastral No. 98 wife's absolutely.
2. As to lot 19 Forrest Hills, there will be a declaration that these premises are held on trust for sale by the husband and to be sold by him and the proceeds of sale after deduction of: 1 ,

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\$10,000 mortgage balance
3,800 value of improvement
3,200 value of her furniture
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i.e. after deduction of \$17,000

from the sale price, the remainder is to be **divided as 2/3** to him

1/3 to her.

In the meantime and until the sale is completed, the monthly mortgage instalments of \$110 are to be paid in that proportion by them i.e. 2/3 by him, 1/3 by her. and I so order.

3. Declaration that plaintiff is entitled solely to furniture and appliances now in her possession amounting to \$3,200.
4. As to lot 19 Forrest Hills, I value it at \$60,000 at date of valuation, 4th June, 1975. Valuation of other lots in Canada not necessary but would say \$3,361 Canada on 8/67.
46. Ordered that the husband pay the costs of this summons. No further order that they be paid out of this sale price.