IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2010 HCV 03404

BETWEEN	**IVAN WILLIAMS**	**CLAIMANT**
A N D	**YVONNE THOMPSON**	**DEFENDANT**

Mrs. Shelly-Ann Beckford-Louden for the claimant.

Miss A. Beckford instructed by Brown, Godfrey and Morgan for the defendant.

Heard: 7th April, 2011 and 15th July, 2011

FAMILY LAW; BENEFICIAL INTEREST IN DWELLING HOUSE – COMMON INTENTION OF THE PARTIES – WHETHER VISITING OR COMMON LAW RELATIONSHIP – TENANT AT WILL

IN CHAMBERS

CORAM: E. BROWN, J (Ag.)

[1] By way of Fixed Date Claim Form, filed on the 14th July, 2010, Ivan Williams seeks two declarations and an order. First, that he is the sole beneficial and legal owner of a parcel of land situated in Albion District, Manchester. Secondly, that he is as well the sole beneficial and legal owner of a dwelling house sited on the said parcel of land. Thirdly, an order for recovery of

possession against Yvonne Thompson for the previously mentioned dwelling house.

[2] With this the defendant has joined issue. Yvonne Thompson's prayer is, first, to be declared the spouse of Ivan Williams under the **Property (Rights of Spouses) Act**. Secondly, and in consequence of the preceding, that she is entitled to one half share and interest in the aforementioned dwelling house, characterized as the family home. Thirdly, orders for the valuation and sale of the dwelling house and division of the furniture and appliances.

BACKGROUND

[3] Sometime in 1996 the parties commenced an intimate relationship. That the relationship was not platonic is the only point of convergence concerning its character. The claimant says it was a visiting relationship, while the defendant says it was never solely so. The defendant says they lived together with the claimant going home on Fridays as he was a practising Seventh Day Adventist. Mr. Williams insists he resided at his parents' home at all material times.

[4] Whatever its character, the relationship subsisted until October, 2007. In the interim, a child was born to the parties in 1997. In the late 1990s Mr. Williams received a gift of 387.75 square meters of land from his father. This gift was supposedly subsequently put into writing, although the document was not tendered and admitted into evidence. The fact of the gift however lies outside the tumultuous waters of dispute. Not long thereafter he started building a dwelling house on that lot of land, probably 1st August, 1999.

[5] Before and during the building of the house Ms. Thompson and the couple's child, along with her son from a previous relationship, lived at a number of rented premises. Ms. Thompson asserts that Mr. Williams was always a member of the household. She swore that they started cohabiting in late 1996. Ms. Thompson said that living arrangement continued to the end of December 2007. She was adamant that during that period their cohabitation was unbroken except for weekends.

[6] The weekends were sacrosanct, for saints, sinners and sanctimonious. While Mr. Williams was at all material times a practising Seventh Day Adventist (SDA), Ms. Thompson began attending the same church post relationship. Further, Ms. Thompson worked at Westico Foods Limited, a SDA controlled company. This religious affiliation had consequences for the parties.

[7] First, when Ms. Thompson became pregnant with the couple's daughter she was fired for being an unwed mother. Secondly, knowledge of the pregnancy led to Mr. Williams being "disfellowshipped" (sic). However, the first was reversed upon the intercession of Ms. Thompson's supervisor, although some doubt hovers over her date of resumption. In her affidavit Ms. Thompson says she was re-hired in December 1997. Under cross-examination her evidence was that her employment ceased in early 1997 and resumed in late 1998. Whichever it was, both sides agree on the fact of her re-employment.

[8] Likewise, Mr. Williams had a reversal of fortunes. He had his robes washed in the blood of the Lamb through an act of re-commitment in 1999. By the public, contemporaneous act of baptism, Ms. Thompson formally joined the

SDA fold. Mr. Williams progressed along the spiritual path to the positions of deacon in 2002 and Sabbath School teacher in 2004. Those positions he held until 2007. Mr. Williams says he ceased holding those positions after knowledge of the conflicts, consequent upon the cessation of the relationship, came to the ears of his congregation. What the body of Christ found out, according to Ms. Thompson under cross-examination, was that they were living together in concubinage. Ms. Thompson testified that Mr. Williams held these positions 'for a short while' until their cohabiting was discovered.

[9] So, from the early days of the construction of the dwelling house both parties were avowed, if questionably devout SDA. Notwithstanding, Mr. Williams said he decided to build a house for himself. Neither did he ask for, nor received any contribution towards this effort from Ms. Thompson. Further, Ms. Thompson was not in a position to financially assist on account of her seasonal employment. Indeed, he had to help her with the payment of her rent.

[10] Therefore, he made all the arrangements from architectural through survey, building approval from the local authority to purchase of materials and supervision of the work and workmen. All but a few of the receipts tendered and admitted into evidence bear the name of claimant. Significantly, not one is in the name of the defendant. Neither did the defendant contend that any of those not in the name of the claimant were in the names of her agents.

[11] This is not to say Mr. Williams denies any financial input from Ms. Thompson. In order for her to occupy the unfinished house, says Mr. Williams, Ms. Thompson bought the kitchen cupboard, one door for a closet and another

for the front of the house. Additionally, at the ground-breaking Ms. Thompson attended at the site and cooked for the men. This activity was repeated at the time of the decking. Ms. Thompson also carried mortar and joined in cleaning up the grounds to make the premises ready for occupation.

[12] Thereafter Ms. Thompson took up possession of the unfinished dwelling house. Both agree that this was subsequent to the receipt of the notice to quit served on her at her last rented dwelling. Mr. Williams asserts that possession was given to her as her impecuniousity rendered her incapable of paying rent. Ms. Thompson, on the other hand, while not denying the fact of the service of the notice to quit, says that merely hastened their plan to move together into the dwelling house.

[13] When Ms. Thompson was cross-examined, after sometime she was finally pinioned to the position of having said in a document that she moved into the house on 1st July, 2006, and was eventually joined by Mr. Williams. She otherwise maintained her position that the house was always intended to be the family home and that there was a pooling of their resources to this end.

[14] Her income from employment at Westico, which Ms. Thompson insisted was full-time, was supplemented by partner draws. Further, her contribution was continued when she became a domestic helper. Ms. Thompson admits some assistance from Mr. Williams to pay arrears of rent. However, she denies she was constantly in need of such help. Her welfare was provided for by an uncle, her son's father and her father.

[15] As far as their living together conflicted with their religious beliefs, Ms. Thompson painted a portrait of nouveau syncretists, blending secret secular sinful living with that of the publicly pious practitioners of the SDA faith. When the torch of cross-examination pierced the darkness of this aspect of the case, Ms. Thompson admitted that it was a requirement that persons in a common law relationship couldn't be baptized. However, in their case, even the night before the baptism they were living together. Then, without any prompting from the cross-examiner, Ms. Thompson went on to assert that Mr. Williams proposed to her shortly after her baptism. She elected to turn him down but continued living with him.

[16] Ms. Thompson called no witnesses in support of her case but Mr. Williams called two. Mr. Christopher Powell, the first of the two, grew up with Mr. Williams and lived on the opposite side of the street from Mr. Williams. He worked on the dwelling house for about six (6) weeks. During this time he was paid and supervised by Mr. Williams and never saw Ms. Thompson at the site. He was unswerving in his testimony about where Mr. Williams lived.

[17] The constancy of Mr. Powell was nigh undone by the vacillation of the next witness, Mr. Leroy Senior. Mr. Senior was a friend and neighbour of the Williams family since the 1960s. That vantage point, it appeared, allowed Mr. Senior to swear in his affidavit that Mr. Williams always lived at his parents' house. Further, he and the parties attended the same SDA church and that the church was rather intolerant of concubinage.

[18] Cross-examination soon became Mr. Senior's crucible. The high temperatures reduced the logwood assertion of parental domicile to the ashes of an absence of knowledge of nine (9) years residence at Barnstape. As the mercury rose in the thermometer, the testimony became, "I don't know about their private life," "I don't know if both had a common law relationship. They might have or might not but I don't know." In respect of the dwelling house in question, he said he wouldn't know if Mr. Williams lived in it or from what time.

REASONING

[19] The following questions therefore fall for determination. First, was the gift from the claimant's immediate predecessor sufficient to make the claimant the sole legal and beneficial owner of the land? Secondly, was the dwelling house constructed from the joint resources of the parties, so much so, that equity would ensure that the defendant be vested with a beneficial interest therein? Thirdly, were the parties single persons cohabiting as if in law they were husband and wife for a period of not less than five years? Fourthly, if the parties so cohabiting was the yet unfinished dwelling house their only or principal residence, to make it the family home within the meaning of the law? Fifthly, if the answer to question three is in the negative, what was the legal relationship between the parties?

[20] The evidence before the court does not disclose the character of the title to the 387.75 square meters of land. That is, no evidence was led to suggest whether it be a registered title or common law title that is involved. What is clear is that an informal subdivision was made of the land the claimant occupied with

his father. There is no evidence that subdivision approval was ever sought and obtained from the local planning authority.

[21] Indeed, there is no evidence of the root of title of the claimant's predecessor in title. As a consequence, the claimant's root of title starts and stops at his father who is said to have made the *inter vivos* gift. In the absence of any evidence of registration of the land, the court is constrained to treat it as unregistered land.

[22] According to the learned authors of **Elements of Land Law 4th edition paragraph 3.15**:

> **At common law 'title' is the term used to denote the right or entitlement of an owner to assert his 'estate' (and its various incidents) against other persons. To have 'title' to an 'estate' means to be entitled… to exercise the various rights associated with ownership of that estate. 'Title' in relation to a freehold or leasehold estate therefore comprises the legal authority to vindicate possessory rights as against strangers and to avail oneself of other rights to control the use, exploitation and disposition of the land.**

[23] Ms. Thompson does not claim to have either a better or any title to the plot of land. In fact, she accepts that the land was an *inter vivos* gift to the claimant. Therefore, as between both parties, there is no contention as to who has title to the legal estate in fee simple. Neither is Ms. Thompson laying a claim to being beneficially entitled to the land. So, the claimant is the beneficial owner of the land vis-à-vis the defendant.

[24] Notwithstanding Mr. Williams being the beneficial owner of the land, Ms. Thompson says she has a beneficial interest in the dwelling house. Does she? According to the learned authors of **Commonwealth Caribbean Trusts Law 2nd edition**:

> **Where, usually in pursuance of some informal family arrangement, a person contributes money towards the acquisition or improvement of property, the court may impose a constructive trust in favour of the contributor in order to satisfy the demands of justice, particularly where the contributor cannot show any entitlement under any other existing principle of equity.**

[25] That statement encapsulates the law as declared in the *locus clossicus* **Gissing v. Gissing [1971] A.C. 886, at page 904.5** Lord Diplock had this to say:

> **Any claim to a 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 upon the proposition that the person in whom the legal estate is vested holds it as a trustee upon trust to give effect to the beneficial interest of the claimant as the 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."**
>
> **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 qui 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.**

[26] So, to put the question more succinctly, Ms. Thompson must show that Mr. Williams, the holder of the legal estate, has so conducted himself that it would be inequitable to deny her a beneficial interest in the house. That is, Mr. Williams must be shown by his words or conduct to have induced Ms. Thompson to act to her detriment in contributing to the construction of the dwelling house. The circumstances must be such that the court can impute to the parties a common intention that Ms. Thompson was to acquire an interest in the property: **Pettitt v. Pettitt [1970] A.C. 777**.

[27] Both cases were considered in **Grant v. Grant and Anor. [1986] 1 ch 638**. The principles are compendiously captured in the headnote:

> **Where a couple chose to set up home together and a house was purchased in the name of one of the parties, equity would infer a trust if there was a common intention that both should have a beneficial interest in the property and the non-proprietary owner had acted to his or her detriment upon that intention; that there had to be conduct from which the common intention could be inferred and conduct on the part of the non-proprietary owner, whether directly or indirectly referable to the purchase of the property, that could only be explained by reference to a person acting on the basis of having a beneficial interest in that property.**

[28] It follows then that there must be a level of inexorability in the conduct of the non-proprietary owner for it to be probative of a beneficial interest. A necessary corollary of this is that not all expenditure by the non-proprietary owner on the land will substantiate the claim to a beneficial interest. In **Thomas v. Fuller Brown [1988] 1 FLR 237**, it was held that ***"it is settled law that the mere fact that A had expended money or labour on B's property did not entitle A to an interest in the property, in the absence of either an express agreement or a common intention to be inferred from the conduct of the parties or any question of estopped."***

[29] In **Pettitt v. Pettitt, supra, 796**, Lord Reid thought it "unreasonable that a spouse should obtain a permanent interest in a house" for having made improvements of 'an ephemeral character'. Lord Reid expressed himself in agreement with Lord Denning M.R. in **Button v. Button [1968] 1W.L.R. 457, 461**. There the learned Master of the Rolls said of the husband, ***"he should not be entitled to a share in the house simply by doing the 'do-it-yourself' jobs which husbands often do."*** Of the wife Lord Denning said (at p. 462):

> **The wife does not get a share in the house simply because she cleans the walls or works in the garden or helps her husband with the painting and decorating. Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interests in, the property.**

[30] The instant case is not one of those 'rare class of cases' in which the parties oral declaration make their common intention as transparently clear as pristine glass. Neither does it fall in the category where the parties' words have

been reduced to writing. In short, their common intention will have to be inferred from their conduct, particularly the expenditure incurred by them.

[31] Before going on to consider the evidence which touches and concerns the parties' common intention, it is perhaps advisable at this stage to say how the parties are being treated. For the purposes of this part of the analysis, the parties are viewed as partners in a relationship. That is, as partners without the assignment of the technical epithet, spouse. The appropriateness of such a characterization shall shortly be investigated.

[32] Returning to the question of common intention, Ms. Thompson alleged that it was their intention to make the dwelling house their family home. Presumably, that was the incentive for her to pool her funds with those of Mr. Williams with the construction of the dwelling house being its object. There is no evidence from which the court can infer the existence of an actual pool of funds. For example, there was no evidence that the parties operated a joint account at any financial institution.

[33] Perhaps the partners were not that organized. The court must then look to see if there was a combining of their resources in a less restrictive meaning of the word pool. There is agreement that Ms. Thompson bought some fixtures to make the dwelling house habitable. Outside of that admission, not even a scintilla of evidence appears among the numerous receipts exhibited, from which it could be said Ms. Thompson bought any construction material. While Ms. Thompson testified that she ordered building material in person, no attempt was made to explain why her name does not appear on any of the receipts.

Interestingly, although Ms. Thompson said she supervised the work, she didn't assert that she sometimes paid the workmen.

[34] A panoramic view of Ms. Thompson's evidence reveals a vista of someone earning a modest income but surviving off the magnanimity of kith and kin. So, without doubting the grit of the Jamaican working woman, to somehow be frugal even in a famine, there could not have been any surplus to contribute to the building of the dwelling house. Against the background of this dearth of evidence of expenditure, the court rejects the contention that there was any pooling of funds.

[35] The only expense the court finds referable to the construction of the house is that for the fixtures admitted by Mr. Williams. Was this expenditure incurred because it was induced by conduct which promised a beneficial interest in the dwelling house? The answer is a resounding no. First, although the court was not enabled to assess the relative value of this contribution, it seems, on the face of it, to be comparatively insignificant to the rest of the dwelling house. The court views this contribution as falling squarely within the borders of what Lord Reid described as of 'an ephemeral character'.

[36] Secondly, all the evidence points to the dwelling house being made habitable in a hurry. Money spent on the house just before Ms. Thompson was put into possession was to make it ready for her occupancy. However, the chasm between the parties as to the reason for this is nigh unbridgeable. Mr. Williams' assertion that Ms. Thompson perched perilously on the edge of penury seems inconsistent with her ability to purchase the fixtures. That apparent

inconsistency is not unassailable for want of any evidence of the monetary value of the fixtures and the going rent in the area. So, the court is left with the naked credibility of the parties. And, having observed them, the evidence of Mr. Williams is preferred. The result is that this contribution was not made because Ms. Thompson was led to believe a share of the beneficial interest in the dwelling house would accrue to her.

[37] Attention is now directed to Ms. Thompson's contributions in kind viz, cooking at the site and labour intensive assistance. The parties were partners in a relationship of some standing. Against that background, those are the sort of things a woman in her position would be expected to do gratuitously. That being the case, these non-monetary contributions find symmetry with the dictum of Lord Denning M.R., (supra), ***"Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interests in, the property."***

[38] The court therefore finds that Ms. Thompson made contributions which are referable to the construction of the dwelling house. However, the explanation for those contributions stands on the other side of a person acting on the basis of having a beneficial interest in the property. Having answered the second question in the negative, were the parties cohabiting as man and wife with the resultant legal consequence?

[39] In discussing the Jamaican family, Dr. Elsa Leo-Rhynie made the following pertinent observation:

> **Although the nuclear family remains the social and religious ideal for all social classes in Jamaica, it exists mainly in the**

> **upper and middle classes of the society as a whole, and in all classes of some ethnic groups such as the Chinese and East Indians.**
>
> **(Grace, Kennedy Foundation Lecture 1993)**

Dr. Leo-Rhynie further noted that "among the lower classes, both legal and non-legal sexual unions are established." The three-point demographic classification of the existing patterns was adopted. They are:

1. Married: man and woman legally united and sharing the same residence.
2. Common-law: man and woman not legally united, but sharing a sexual union and a common residence.
3. Visiting: man and woman sharing sexual relationship but not legally united nor sharing a common residence.

[40] Whereas no legal consequences attach to the visiting relationship as a specie of Jamaican family pattern; the same is not the case for a common law union. The **Inheritance (Provision for Family and Dependents) Act, 1993**, without the imprimatur embodied in the word 'spouse', recognizes unions of five (5) years standing. Section 4(2)(e) clothes a single man and a single woman with the standing to apply for reasonable financial provision out of the deceased partner's estate. The **Maintenance Act, 2005** and the **Property (Rights of Spouses) Act, 2004** made this a trend.

[41] Under both later Acts 'spouse' is defined. Section 2 of the **Property (Rights of Spouses) Act, 2004**, says 'spouse' includes –

(a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years;

(b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years,

immediately preceding the institution of proceedings under this Act or the termination of cohabitation as the case may be.

By necessary implication, the terms 'single woman' and 'single man' exclude estranged married persons, however long the separation.

[42] What then does it mean to cohabit as single man and single woman? Section 2(1) restricts the meaning of cohabit. It says:

> **"Cohabit" means to live together in a conjugal relationship outside of marriage and "cohabitation" shall be construed accordingly.**

In other words, the single man and single woman must conform to the second demographic classification viz. common law. Whereas the demographers have isolated only two characteristics, the courts have gone some distance in fine-tuning the indicia of the common law union.

[43] In **Millicent Bowes v. Keith Alexander Taylor 2006/HCV05107 January 19, 2009**, McDonald-Bishop, J reviewed the authorities and accepted some 'signposts' distilled by Tyner, J in **Kimber v. Kimber [2000] 1 FLR 384**:

(i) Living together in the same household.

(ii) A sharing of daily life.

(iii) Stability and a degree of permanence in the relationship; that is, not a temporary infatuation or passing relationship such as a holiday romance.

(iv) Finances, that is to say, is the way in which financial matters are being handled an indication of a relationship?

(v) A sexual relationship.

(vi) Children.

(vii) Intention and motivation.

(viii) The 'opinion of the reasonable person with normal perceptions'.

[44] This court concurs with the conclusion of McDonald-Bishop, J supra (Paragraph 15, paragraph 50):

> **Whether parties share a conjugal union outside of marriage seems, ultimately, to be ascertainable upon the application of an objective test after taking into account subjective elements of the parties' conduct and interaction with each other. That is to say the consideration must be not only what the relationship, on the evidence, might have meant to the parties themselves or what they claim it to be but, above all else, what it would appear to be to the ordinary and reasonable person of normal perception looking on with full knowledge of all the pertinent facts.**

[45] In the instant case, there is no positive evidence of the marital status of the parties. Neither was it averred in the statements of case. Under cross-examination Ms. Thompson asserted that Mr. Williams made a proposal of marriage to her which she turned down. That refusal to stand at the altar was not because of any legal impediment but the amorphous 'family setting'.

Presumable, it was accepted between the parties that each was a single person but neither so asserted. So, inferentially, the court accepts that each was a single person for the purposes of the Act, since it was not an issue between them.

[46] In addition to the tacit acceptance of their status in law, the parties are at one that they had a sharing of daily life. There is also accord that theirs was a sexual relationship which produced a child, the paternity of whom is not in dispute. The chasm between the parties is on the central question of common residence.

[47] Ms. Thompson testified that Mr. Williams commenced living with her in November, 1996. Both are agreed that their relationship ended in 2007. If they were indeed living together, that would have been for eleven (11) years immediately preceding the termination of cohabitation. That would have been twice the statutory minimum number of years under the Act.

[48] However, Mr. Williams insisted that all he did during this period was visit. To this end, he admitted sleeping over but denied that he did so for six days per week. He denied moving clothes into Ms. Thompson's home. It was therefore unsurprising when he agreed with the suggestion that whenever he slept over he wore only his boxers. This admission is not probative of the claim of residence as it is as consistent with a preference for very little attire during that activity as it is with not having any or suitable night wear at the home. A man not exercising such a disposition should have a choice of sleep attire in his own home.

[49] From a common sense point of view, even the presence of clothing belonging to Mr. Williams in Ms. Thompson home would be inconclusive, by itself. This relationship extended over a decade, and it seems only natural that some items of clothing would be left there for a variety of reasons. It is difficult to imagine that over the length and breath of their relationship Mr. Williams arrived in one suit, slept in his boxers then left in the same suit on every occasion. There was evidence that he often worked late, so would he not go there straight from work sometimes? And if he did, would he have left her home back to work next day in the same clothing? It appears reasonable that he would take a change of clothing and Ms. Thompson would launder the dirty suit. A woman who was not aversed to manual work at a construction site would surely be magnanimous enough to wash a suit of clothing.

[50] The court must therefore look for other evidence to resolve this issue. Mr. Christopher Powell impressed the court as a witness who was prepared to be frank, even when that did not necessarily cast him in the best light. Mr. Powell was not only seized of knowledge of Mr. Williams' goings and comings, but also about who resided where at the claimant's parents' house. Consequently, at the risk of superfluity, the court accepts Mr. Powell as a witness of truth.

[51] Conversely, the court rejects the evidence of Mr. Leroy Senior as being totally worthless. This 'hostile' witness tried to perch on the dividing fence during cross-examination. He neither confirmed his support for Mr. Williams nor affirmed the case for Ms. Thompson. Alas! Sitting on the fence is sometimes ill advised. Mr. Senior's plummet from his illusory pedestal of credibility was

nothing short of meteoric. Such a stellar fall reduced his testimony to a mound of ash from which only the phoenix could have arisen; and Mr. Senior proved himself to be a common, unremarkable bird of the wild.

[52] Equally unremarkable was the defendant herself. Unassuming cross-examination that masked its surgical precision and Herculean force, exposed Ms. Thompson's evidence for the tangled web it was. First, on the question of the parties moving in together into the 'family home', Ms. Thompson's contempt for the oath was exposed. After insisting that they had moved in together, she eventually admitted that she had claimed otherwise in a document sworn to before a Justice of the Peace.

[53] Secondly, Ms. Thompson's evidence that Mr. Williams fell out of favour with the church when their common law union was discovered was rejected for its sheer incredulity. The coincidence of discovery with the cessation of incumbency, Ms. Thompson alleges, is too convenient for comfort. The more plausible explanation is that given by Mr. Williams, that he was asked to step down when the parties' difficulties became known. These offices had been held for between three and five years. With the church being just over a mile away, in a rural community, it is difficult to imagine word taking that long to get around.

[54] Thirdly, Ms. Thompson's declaration of rejection of a proposal of marriage was perhaps most revelatory of her mendacity. Here was a woman who had felt the sting of religious sanction for conceiving outside of wedlock, receiving an offer to be made righteous turning it down. And that for no more substantial a reason than Mr. Williams' 'family setting'. Since she dates the proposal to the

proximity of baptism in 1999, she continued to live with him for approximately eight years. That was an amazing choice for a SDA adherent, scarred by religious ostracism. That this new SDA convert should have chosen to continue to live in sin, rather than heed the Pauline dictum: better to marry than to burn with passion, takes credulity to the realms of infinity.

[55] In short, the court found itself unable to accept Ms. Thompson on the point, even on a balance of probabilities. This was an issue raised by Ms. Thompson. So it was a little surprising that no witnesses were called by her. Not one reasonable person seized of all the pertinent facts to say 'I perceived them to be man and wife.' Accordingly, the court finds that the relationship that existed between the parties was a visiting one.

[56] Having found that the parties were not cohabiting, there is no need to go on to consider if the dwelling house in question was their only or principal residence. Since they were not so cohabiting, the dwelling house cannot be said to have been their family home, entitling the defendant to a possible half share therein. The court's attention is now adverted to the legal relationship between the parties.

[57] The learned authors of **Elements of Land Law 4th edition paragraph 7.273** say that a tenancy at will:

> **Arises where, with the consent of the owner, a person enjoys occupation of land for an indefinite period in circumstances where either party may at any time terminate the arrangement at will, i.e. on demand.**

Further, at paragraph 7.275:

> **A tenancy at will comprises merely a 'personal relation between the landlord and his tenant. The tenant at will is a tenant only in the root sense that he holds land: he may thus have tenure, but he certainly has no estate. The tenant at will holds no proprietary interest in the land capable of sublease or assignment to a stranger. This being so, the tenant at will closely resembles the licensee, who similarly has no estate in the land and who avoids being classified as a trespasser only because the landowner consents to his occupation. However, the status of the tenant at will differs virtually from that of most licensees in that, even if he has no estate as such, the tenant at will is accounted to be in possession of the land.**

[58] In **Lynes v. Snaith [1899] 1 Q.B. 486**, the defendant was allowed by her father-in-law to take possession of a cottage and live there rent free for upwards of thirteen years. The county court judge held that the defendant was a licensee and not a tenant. On appeal, Lawrence J. held, at page 488:

> **It is clear that she was a tenant at will and not a licensee; for the admissions state that she was in exclusive possession – a fact which is wholly inconsistent with her having been a mere licensee.**

[59] The essence of a tenancy at will is that it is determinable at the instance of either party, "expressly or impliedly intimating to the other his wish that the tenancy should be at an end." **(Halsbury's Laws of England 3rd edition paragraph 1154)**. "Until the intimation is thus given the tenant is lawfully in possession, and accordingly the landlord cannot recover the premises in an action for recovery of land without a previous demand for possession or other determination of the tenancy."

[60] According to **Halsbury's (paragraph 1155)**:

> **Anything which amounts to a demand of possession, although not expressed in precise and formal language, is sufficient to indicate the determination of the landlord's will. Thus, the landlord may expressly demand possession, or state that the tenant is in against his will, or send for the keys; and of the notice states terms, and intimates that if they are not accepted the landlord will take steps to recover the premises, and the terms are rejected, this is a sufficient notice to determine the tenancy. The service by the landlord of a writ for possession determines a tenancy at will but does not constitute a notice to quit.**

[61] In the instant case, the reasonable and inescapable inference is that Mr. Williams gave exclusive possession of the dwelling house to Ms. Thompson. Inferentially, exclusive possession was given rent free and for an indefinite period of time. These indicia make the instant case indistinguishable from **Lynes v. Snaith, supra**. Having taken up occupation with the consent of the declared owner, Ms. Thompson's indefinite enjoyment thereof falls squarely within the four corners of the learning in **Elements of Land Law (paragraph 7.273, supra)**. So, the legal relations between the parties is a tenancy at will.

[62] Since the defendant is no more than a tenant at will, any demand, however imprecise or informal, would suffice to determine her tenancy. It is an undisputed fact that Mr. Williams served her a formal notice to quit. Consequently, her right to remain in the unfinished dwelling house ceased upon the expiry of the period given in the last notice to quit.

[63] The court therefore makes the following declarations:

(i) The claimant is the sole beneficial owner of the lot of land 387.75 square meters being part of all that parcel of land part of Albion situated at Knockpatrick in the parish of Manchester containing by estimation one acre more or less and butting northerly by Parochial Road leading from Hillside Square to Albion District, separating the land from land east belonging to Marvin Smalling, south by lands owned by Dudley Williams and west by lands owned by Hazel Williams in the parish of Manchester.

(ii) The claimant is the sole beneficial owner of a dwelling house situated on the said 387.75 square meters being part of all that parcel of land part of Albion situated at Knockpatrick in the parish of Manchester containing by estimation one acre more or less and butting northerly by Parochial Road leading from Hillside Square to Albion District, separating the land from land east belonging to Marvin Smalling, south by lands owned by Dudley Williams and west by lands owned by Hazel Williams in the parish of Manchester.

Further:

(iii) Order for the recovery of possession of the dwelling house situated on the said 387.75 square meters of land, forthwith.

(iv) Costs to the claimant to be agreed or taxed.