

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CLAIM NO. 2003/HCV 01737**

<b>BETWEEN</b>	<b>LEGEORGIANNA ALEXIE BENJAMIN</b>	<b>CLAIMANT</b>
<b>A N D</b>	<b>DOUGLAS EARL BENJAMIN</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>A N D</b>	<b>JUDY STEPHANIE BENJAMIN</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**Alton Morgan instructed by Alton E Morgan & Co., for Claimant**

**Conrad George instructed by Hart, Muirhead, Fatta, for the 2<sup>nd</sup> Defendant**

**Heard 22<sup>nd</sup> May 2007 and 30<sup>th</sup> April 2008**

**Campbell J.**

(1) The claimant, Mrs. Legeorgianna Benjamin, is the mother of Douglas. The defendants, Douglas and Judy, were married on the 30<sup>th</sup> September 1994. In June 2001, a residential property was purchased at 1 Montgomery Avenue, Stony Hill, St. Andrew. The parties to this suit were named as tenants-in-common on the Certificate of Title. The defendants never lived together at this home, they co-habited until 15<sup>th</sup> February 2002, living separate and apart since that date.

(2) On the 28<sup>th</sup> August 2003, the claimant filed a fixed date claim form, citing the facts of the acquisition of the property and the change in the relationship of the parties, and praying that the ownership of the property be determined, based upon contributions made by the parties to the cost of acquiring the said property.

(3) The Claimant sought the following remedies;

(1) That upon an inquiry into the source of monies paid to acquire the said property a declaration be granted that Douglas Earl Benjamin and Judy Stephanie Benjamin hold their interest in the property comprised in the Certificate of Title registered at Volume 1339 Folio 800 in resulting trust for Legeorgianna Benjamin.

(2) That a declaration be granted that the applicant Legeorgianna Alexie Benjamin is exclusively beneficially entitled to be the sole registered proprietor of the property comprised in Certificate registered at Volume 1339 Folio 800.

(3) Alternatively that a declaration be granted for the distribution of the interest as tenants-in-common in the proportion of 98% to Legeorgianna Alexie Benjamin

and 1% each to Douglas Earl Benjamin and Judy Stephanie Benjamin be noted on the Duplicate Certificate of Title.

(4) In her affidavit in support of the claim, the claimant states that she executed a Sale Agreement on the 21<sup>st</sup> June 2001 for the purchase of the property and that she engaged her son and his wife to conduct the transaction. She depones that she sent the monies to cover the deposit and further payment of the balance of the purchase price in the amounts of JA\$705,000.00 and \$3,995,000.00 respectively. In addition, the claimant contends that she had to meet the necessary closing costs and the costs of acquiring fixtures and installing them to make the house habitable.

(5) She contends that the instructions to her Attorneys were given by the defendants, and “that it was not made known to the Attorneys that the Title should be in my name only for the remainder of my life and to pass to the Respondents on my death.”

She states that she first became aware of the inclusion of the defendants on the Title as *immediate owners* in September 2001, but did not raise an objection at first because she had advice that it was necessary to meet the requirements of the Transfer Tax Act for exemption from death duty.

(6) In cross-examination, she admitted that she had been advised by her attorney-at-law, Ms. Nesta Claire-Smith before she signed the Sales Agreement. She claims that the Title was never sent to her, she admitted that in the Sales Agreement the parties were named tenants-in-common. In relation to the funding of the renovation of the house she denied that anyone else participated in it. She denied that she had told Judy that she had been bequeathed a substantial sum of money and was now able to afford the defendants a wedding present and had proposed giving them US\$100,000.00. She denied that her husband had given \$2,000,000.00 towards the purchase price. She denies that she knew the effect of a tenancy-in-common.

(7) In her affidavit sworn to on the 22<sup>nd</sup> December 2004 in opposition to the claim, Judy Benjamin states that as a result of the proposition of a wedding gift by her mother-in-law, she and her husband spent one year looking for a desirable property. The house, when found, was described as being in an atrocious state of disrepair, with a tree growing through the roof.

(8) Mrs. Judy Benjamin depones that it was agreed with the claimant that, her gift should be used to purchase a house. She states that it was agreed with the claimant that her husband and herself should make an offer to the bank of Nova Scotia to purchase the house for \$4,700,000.00, which would be funded by the claimant. The defendant says that her mother-in-law who advised her to instruct attorney-at-law Nesta Claire-Smith to act on their behalf in the purchase.

(9) The 2<sup>nd</sup> defendant said she formed the view that the money for the house was their gift and that her husband and herself would have been the only persons on the title. After seeing the title, she was of the view that she had a one-third entitlement to the house. And it was on that basis she agreed to proceed. She said she was aware that as a tenant-in-common it was not an outright gift.

(10) She claims that her mother-in-law's claim was motivated solely by the wish to retrieve the property because of the separation of her husband and herself. In cross-examination, she said her mother-in-law proposed giving them US\$100,000.00 with a strong recommendation that they purchase a house. She admitted that the house that was acquired was uninhabitable at the time of acquisition and she had no monies with which to renovate it. She conceded that if it was a gift, it was more reasonable to purchase a home for \$4,700,000.00 which would not require any further expenditure by the defendants.

(11) Douglas Benjamin in his affidavit dated 3<sup>rd</sup> June 2005, seeks to confirm his mother's evidence that, it was not his mother's intention for his wife and himself to be immediately entitled but to provide them with a remainder interest, which would come into effect upon her death. He said as a result when this action was instituted he transferred his interest in the property back to her.

(12) It was submitted by Mr. Alton Morgan, that it was clear from the evidence of the defendant that there was evidence that the instructions to Nesta Claire-Smith indicated there was no outright gift to the defendant and her husband. He further submitted that there was misunderstanding between the claimant and the attorney as to her wishes for exclusive ownership during her lifetime.

(13) He further submitted that full legal title was not a bar to prevent claims in equity being brought against the registered owner. That where property was purchased solely by one party but has been conveyed in the name of another party or in the joint names of the purchaser and someone else, the law of trusts prescribes that a presumed resulting trust arises in the name of the purchaser. In essence, although the legal title has passed, the equitable title remains with the transferor for value.

(14) Mr. George submitted that, there was evidence that there was a Sales Agreement on which the claimant had been advised by a reputable Attorney-at-law. There was a valid gift. There was no evidence to support the contention of a misunderstanding between the claimant and her counsel. A gift in law is not revocable.

There is a presumption in favour of a child. It was submitted that the issue was whether there was evidence that there was no intention to confer the benefit. There was no cogent evidence which does that.

## **Analysis**

(15) The second defendant has alleged that the claimant proposed a wedding present of US\$100,000, which it was 'strongly recommended' should be used to purchase a home. What is clear however is that the monies remitted by the claimant in purchasing the house, was well in excess of that sum. The claimant sent US\$93,600.00 on the 5<sup>th</sup> July 2001 and US\$10,000 on the 15<sup>th</sup> August 2000. A further sum equivalent to J\$3,995,000.00, plus expenses incidental on closing were remitted to complete the transaction. The property after that outlay was still incomplete and had to be provided with the additional sums for the installation of fixtures and fittings. It was inspected during the month of December 2000, and the

replacement cost of the building and site improvement was valued at J\$15,309,375.00. A far cry from the sum the 2<sup>nd</sup> defendant claim was proposed as a wedding-present.

(16) The conduct of the claimant in advising the 2<sup>nd</sup> defendant and her husband to instruct Nesta Claire-Smith to act on behalf of the purchasers, and the response of Nesta Claire-Smith when queried by the 2<sup>nd</sup> defendant as to the reason for the inclusion of the claimant's name on the title, appear to be inconsistent with a gift. In cross-examination, the 2<sup>nd</sup> defendant admitted that although she had not received a wedding present at the time of her marriage, she had a year later received a washing machine from the claimant.

(17) The conduct of the 2<sup>nd</sup> defendant was inconsistent with someone who had acquired a gift. She says she had no idea after the house was acquired, what it would cost to "make it suitable" for habitation. Although the sum promised as a wedding present had already been exhausted, there was no provision made by the 2<sup>nd</sup> defendant, independent of the claimant, for its refurbishment of the house. Judy Benjamin admits that it would have been more reasonable to purchase a home for the sum of \$4,700,000.00 that would require no further expenditure. As it stands, despite the vast outlay on acquisition and refurbishment, the 2<sup>nd</sup> defendant was unable to occupy 1 Montgomery Avenue.

(18) There is a conflict on the evidence as to the source of the instructions to the attorney-at-law, Nesta Claire-Smith. The claimant avers that the transfer was done upon the instructions given to the attorney in Jamaica by the 2<sup>nd</sup> defendant and her husband. This is confirmed in the affidavit of Judy Benjamin, (see paragraph 5). However, although Judy Benjamin depones at paragraph 7 that the defendants attended on the attorney, she is silent as to what their instructions to the attorney were, and whether those instructions were their own instructions as would have expected been if the defendants had been the recipient of a gift. There is no dispute that the claimant resided abroad at the material time.

(19) Both the claimant and the 2<sup>nd</sup> defendant have asserted that when they observed the Sales Agreement, they queried its contents with the attorney, neither insisted on effecting changes. I find that the drafting instructions to the attorney were communicated by the defendants on behalf of the claimant, but that communication did not correctly reflect the claimant's directions.

(20) Where a person purchases property and pays the purchase money in the name of another, there is prima facie no gift; there is resulting trust in the name of the purchaser. This was spelt out in **Dyer v Dyer (1975) All ER 205**.

*"The trust of a legal estate, whether ...taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser, whether in the name of one or several whether jointly or successive results to the man who advances the purchase money. This is a general proposition supported by all the cases, and there is nothing to contradict it, and it goes on a strict analogy the rule of common law, that where a **feffment** is made without consideration the use results to the **feoffor** (the transferor) " :*

(21) Equity presumes that the intention of the purchaser in providing the purchase money was to enjoy the benefits of the purchase, so although the legal title has passed, the equitable title remains with the purchaser.

(22) This presumption is rebuttable by sufficient evidence that a gift has been intended. The 2<sup>nd</sup> defendant's argument is that this was a gift by a loving mother-in-law to her daughter-in-law, and was only withdrawn when the marriage ended. The 2<sup>nd</sup> defendant has claimed such an advancement based on certain proposals she claims was put forward by the claimant. There is no such presumption of advancement in favour of the 2<sup>nd</sup> defendant, a daughter-in-law. Even if such a presumption of advancement had existed, it is rebutted by the absence of any evidence of an intention to provide the 2<sup>nd</sup> defendant with a present benefit. There was clearly no time-table when the rehabilitation of the house was to be complete. Moreover, as already pointed out, the retention of an interest by the claimant is inconsistent with such a presumption.

(23) The Court was referred to the Privy Council decision in **Helga Stockart v Margie Geddes (Executrix of the estate of Paul Geddes) No. 2** delivered on the 14<sup>th</sup> day of December 2004. The parties were a man and his mistress. The Court found that although the "joint accounts" were established 'for their benefit' that was consistent with the mistress whose name was placed on the account having no beneficially interest in the money in the accounts, until she had actually exercised her right to draw upon it, until then, the monies belonged to Mr. Geddes, and as between him and Ms. Stockart, he was entitled to terminate her right at any time."

I find that there was no contribution by the 2<sup>nd</sup> defendant. There was nothing in the evidence to support the 2<sup>nd</sup> defendant's contention of such a contribution. The 2<sup>nd</sup> defendant's main contribution appears to be the proceeds of the sale of a motor vehicle which was the property of the claimant's husband and an unspecified number of red bricks donated by her parents.

I find that the 2<sup>nd</sup> defendant holds her interest on a resulting trust for the benefit of the claimant.

The court grants the following;

- (i) A declaration that Douglas Earl Benjamin and Judy Stephanie Benjamin hold their interest in the property comprised in Certificate of Title registered at Volume 1339 Folio 800 in resulting trust for Legorgianna Alexie Benjamin.
- (ii) That the applicant, Legeorgianna Alexie Benjamin is exclusively entitled to be the sole registered proprietor of the property comprised in Certificate of Title registered at Volume 1339 Folio 800.
- (iii) Costs to the claimant to be agreed or taxed.