



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2011HCV08090**

**IN THE MATTER of the entitlement of
JOSEL DRUMMOND to ONE-HALF of
the legal and beneficial interest in all
that parcel of land comprised in the
Certificate of Title registered at Folio
1195 Volume 809 of the Register
Book of Titles.**

BETWEEN	JOSEL DRUMMOND	CLAIMANT
AND	FAVAL DALEY-DRUMMOND	1ST DEFENDANT
AND	PAULINE WOOLLEY	2ND DEFENDANT

Land – Claimant transferred his share to others – Purpose of transfer was so that creditors could not go after family home – Whether Claimant still has beneficial interest in the property.

Leonard Green instructed by Chen Green & Co. for the Claimant

Dionne Meyler Reid instructed by Dionne Meyler Reid & Associates for the Defendants

In Chambers

HEARD: 4th and 6th December 2013

CORAM: BATTS J.

[1] This Judgment was orally delivered on the 6th December 2013.

- [2] On the morning that this trial in Chambers was to start the Claimant was absent. His attorney explained that the Claimant had been missing for several months. His family was of the view he was deceased. His counsel admitted however that there was not sufficient evidence, or passage of time, to have him presumed dead. He therefore applied for an adjournment of the trial.
- [3] Counsel for the Defendants opposed the application vigorously. She stated that one of her clients had come from abroad for the trial and that the Claimant's case was not arguable and had no possibility of success. She was prepared to try the case on the affidavits. Mr. Green indicated that if the Claimant's affidavits were to be used as his evidence without cross-examination then he was prepared to commence the matter.
- [4] The case therefore commenced on that basis. The Claimant's affidavits of the 2nd December 2011, 13th September 2012 and 21st March 2013 were therefore admitted as evidence. The Claimant then closed his case. The Defendants opened their case and the affidavits sworn to by the First Defendant Faval Daley-Drummond (after being sworn she described herself as Faval Daley) dated 30th March 2013, 1st May 2013 and 19th October 2012 were admitted as her evidence in chief. The 2nd Defendant Pauline Woolley also swore to these 3 affidavits and they also were her evidence in chief. Both witnesses were cross-examined. A bundle of documents (**Exhibit 1**) was by consent admitted into evidence. The Defendant's case was then closed. The parties made oral submissions.
- [5] It is fair to say that having read the affidavits and listened to the submissions I am satisfied that the Claimant must fail.
- [6] His claim is for a 50% beneficial interest in property known as part of Bruces Hill, Cove Pen, Whitehouse and Fustic Grove now called South Sea Park all in the parish of Westmoreland and being the Lot numbered 150 comprised in Certificate of Title registered at Volume 1195 Folio 809 of the Register Book of Titles. The Title is **Exhibit "JS2"** to his affidavit of the 2nd December 2011. That document reveals that the land was transferred by Transfer Np. 10499330 registered on the 10th day of February 1999 to Faval Drummond and Josel Drummond as tenants in common. Further that by Transfer No. 1260198 by gift registered on the 17th November 2003 it was transferred

to Faval R Drummond, Josel Drummond and Pauline Angella Woolley as joint tenants. Most importantly the land was further transferred by Transfer No. 1508766 by way of gift registered on the 18th day of December 2007 to Faval R Drummond and Pauline Angella Woolley as joint tenants.

[7] The 1st and 2nd Defendants are mother and daughter. The Claimant was married to the 1st Defendant in 1996; they were divorced in 2010. The 2nd Defendant was the Claimant's stepchild.

[8] The Claimant contends that at all material times he held a beneficial interest in the said property. He stated that himself and the 1st Defendant were married in the United Kingdom and lived there until the year 2008 when they moved back to Jamaica. In his affidavit of the 21st March 2013 he states that the house was built by joint contributions of himself and the 1st Defendant. He maintains that at the time of purchase it was intended that the house would be their jointly owned family home.

[9] The Claimant, quite candidly, admits the circumstances surrounding the transfer of the 18th December 2007. He states that in 2002 his business place was destroyed by fire and he filed for bankruptcy in the United Kingdom. He says the 1st Defendant suggested to him that he transfer his interest in the said land to herself and her daughter "so that my creditors would not be able to go after our family home". He said she promised she would never do anything to prejudice his interest and that they would both live in the house until they died. At paragraph 7 of the same affidavit he stated,

"I agreed to transfer by way of gift my one-half interest in said house to the 1st and 2nd Defendants and myself as joint tenants."

In paragraph 8 he states that the 1st Defendant was still not happy with his name still on the property and therefore another transfer was done in 2007 so that,

"the property was solely owned by the 1st and 2nd Defendants".

[10] The Claimant reaffirms the position in his affidavit of the 21st March 2013 which contained the following:

a) Paragraph 8,

“It was my desire to protect the house and my trust and belief in our marriage that caused me to rely on the advice given by the 2nd Defendant who was much more educated than I am, she being a legal secretary and I was being advised by persons many of whom were lawyers, who were of the view that the best way to protect our interest in the family matrimonial home would be for me to take my name off the title in the light of all my financial difficulties.”

b) Paragraph 10,

“The fear of losing my house was foremost in my mind since I had been financially deflated and feared that at my age, I would end up homeless if the land was not transferred to the defendants.”

c) At paragraph 14.

After stating that he did not receive independent legal advice before signing the transfer he stated,

“I never told the defendants or anyone else that I signed the documents to avoid paying debts, rent arrears, and for evasion of tax returns. The only reason I signed the deed was to protect our family home on the advice I received from the financial advisers that if I did not do so the matrimonial family home may be in danger.”

[11] For completeness I should indicate that the Claimant’s affidavit also dealt with other matters. One of which was the circumstances in which he gave up possession of the said land. He says following a domestic altercation which became physical, the 1st Defendant took him to court for a protection order. He also states that the initial transfer was to himself and the 1st Defendant and their expressed intention was to own the property together.

[12] The reason I am of the view that this claim must fail is the circumstances surrounding the Transfer of the 18th December 2007. In the first place a transfer from the Claimant

creates a common law presumption of advancement in favour of his wife and stepdaughter. Even without that presumption the Claimant's explanation, as outlined above, means that he was fully aware that creditors might have come seeking out property he owned. Therefore, he decided to divest himself of ownership so as to frustrate any attempt at attachment. In order for this device to succeed his legal and beneficial interest will have had to be conveyed. This is because creditors might obtain orders with respect to legal and/or equitable interests and might even attach debts or outgoings from the property to which he may be beneficially entitled. If the Claimant is to be believed therefore the intention must have been to convey his interest in the property and hence avoid the prospect of losing his 50% share to creditors.

[13] If this is so, and to the extent necessary I so find as a fact, then when he executed the transfer in question his interest was lawfully transferred to the Defendants. His claim in consequence fails.

[14] Mr. Green for the Claimant advanced an interesting proposition. This was that what was of utmost importance was the Claimant's knowledge and intent. The intent said Mr. Green was clearly to part only with the legal interest whilst retaining a beneficial interest. He asks this court to find this was the joint intent and to create a constructive trust and declare that the Claimant's 50% share is held in trust. The first problem with this submission is that the Claimant has not said that he intended to retain a beneficial interest. Mr. Green submits this is to be inferred. If so then it seems to this court that what the parties to the transfer will have been engaged in is deception or some sort of fraud. This is so because the purpose of removing his name from the registered title whilst retaining an equitable interest was to represent to the world that he had no interest. Creditors or future creditors would see the title and leave well alone because the Claimant's name was not there and he had no caveat noted. Mr. Green submits that is perfectly legal. Honest persons he asserts are entitled to organize their affairs in a manner most beneficial to themselves.

[15] That may well be so however if in so doing they conceal in order to deceive then a court of equity cannot be expected to facilitate such conduct. In other words, critical to the success of the Claimant's (on this alternative scenario) goal of avoiding creditors

(whether anticipated or actual) is the belief induced in the world at large that the Claimant had no proprietary interest in the said land. That inducement is by the removal of his name from the title. If Mr. Green's submission is accepted the Claimant will not have transferred his interest. The court, because of the secret joint intent at the time of transfer, must declare that the Claimant still has a 50% interest.

[16] In my view, a court ought not to render assistance to the perpetuation of deception. The court will not give effect to an illegality. It has been decided that sometimes a court will ignore the existence of the illegality where not to do so will allow the perpetrator of the illegality to gain a benefit or where it may benefit another party to the illegality. This may have been a point to consider and of some moment were I of the view that the parties (both of them) did not intend to transfer legal and beneficial interest. I will not presume the parties intended to deceive anyone by effecting the transfer. I accept the Claimant at his word that he transferred his interest in order to save his home. This as I have said above, could only be successful if both legal and beneficial interests were transferred. I hold that this is what the Claimant did. His claim therefore fails.

[17] I will for completeness, and in the event another court takes a contrary view, briefly speak to some other factual issues which arose. The Defendants attempted to say that the transfer of the 10th February 1999 was the result of a lawyer's advice and there was not an intention to give an interest to the Claimant. On the evidence that is not a sustainable proposition. It is manifest that the parties were registered as tenants in common. Surely that is an indication of each having a separate interest. Secondly the 1st Defendant admitted in cross-examination that in 1999 at the time the land was bought she had decided to give the marriage another chance. They returned to Jamaica and she was expecting or hoping they would live as man and wife forever. This as we have seen was not to be. The Claimant received a 50% beneficial interest in February 1999. I however accept that the Claimant was not a major financial contributor. It was the 1st Defendant who spent the bulk of money on the household and to purchase the property. Indeed on his own admission the Claimant was a bankrupt and had immigration and other problems. Finally the Defendants' counsel submitted that the Property Rights of Spouses Act cannot be prayed in aid because a

third party (namely the 2nd Defendant) is registered on the title. To be fair Mr. Green did not seek to rely on that statutory presumption. The submission therefore succeeds.

[18] I should add also that any thought of reliance on some sort of equitable estoppel, because the 1st Defendant represented that the Claimant could live there the rest of his life, would be defeated by his own subsequent conduct. Surely such a licence would be subject to a condition of good behaviour. The acts of violence and the need for Judicial Protection Orders negated any alleged estoppel.

[19] In the result, therefore the claim is dismissed. Costs will go to the 1st and 2nd Defendants to be agreed or taxed.

David Batts
Puisne Judge