

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 288 OF 1997

BETWEEN                      MAUD LENA GRAY                      APPLICANT  
A    N    D                      ALBERT GRAY                      RESPONDENT

Ms. H. Gibson-Henlin and Mrs. S. Soares for Applicant

Mr. Campbell instructed by Pollard, Lee Clarke & Campbell for  
Respondent

**ORAL JUDGMENT**

**Heard: 21 February, 2<sup>nd</sup> & 9<sup>th</sup> March 2001**

**CORAM: CAMPBELL, J (Acting)**

Mrs. Maud Lena Gray, has applied by Amended Summons pursuant to S. 16 of the Married Women's Property Act for a determination of all question between herself and her husband in respect of the ownership of two properties and seeks to be declared beneficially entitled to one hundred (100%) percent interest in the two disputed properties or alternatively the Court to declare:

- (a) What are the respective interests of the applicant and the respondent in premises situate at 50 Donmair Drive, Kingston 19 in the parish of Saint Andrew registered at Volume 1009 Foilo 414 and premises situate at 69 Almond Drive, Bridgeview in the parish of Saint Catherine, registered at Volume 1251 Folio 80.
- (b) That the defendant should take no steps by sale, assignment of any rights, title or interest which he now purports to have in the said premises or do any act whatsoever to create any right title or interest therein.
- (c) That a report and valuation of the said premises be taken or alternatively that a valuation agreed upon by the applicant and respondent be taken.
- (d) That the Registrar of the Supreme Court be empowered to sign any and all documents to effect a registrable transfer if either of the parties is unable or unwilling to do so.

The Application was supported by the wife's affidavit and her affidavit in response to the Respondents reply. The parties were cross-examined. At the close of the Respondent's cross-examination, an application was sought to amend the Summon to have the Court determine the applicant's entitlement to be one hundred (100%) per cent of the beneficial interest in both properties.

The following were undisputed, that the parties had met sometime around 1989. They were then both residing in the United States of America. In 1991, a house at 50 Donmair Avenue, was purchased in the joint names of the parties, as tenants-in-common. In 1992 a child was born to the couple, in that same year the Respondent was incarcerated in the United States. In 1993, the second property, a dwelling house at 69 Almond Drive, Bridgeview was purchased, in the name of the parties as joint tenants. They were married in 1995, unfortunately, two years later, the marriage broke down irretrievably.

The case for the Applicant, was that the properties in dispute, were acquired in the absence of any contribution from the Respondent. She further contended that the placing of the Respondent's name on the title was a gratuitous act on her part. The Respondent, it was submitted, "was a mere volunteer and equity does not assist a volunteer."

The Respondent, for his part, contends that, in respect of the Donmair Property, which was transferred to the parties, as tenants-in-common, the agreement for sale constitutes the clearest evidence of the intention of the parties. It was argued, that it would take cogent evidence as to whom the property is to belong or in what definite shares each should hold to reverse

that clear intention. Counsel for Respondent submitted, that there was no such evidence.

In respect of the Almond Property the Respondent's contention is that each party holds a beneficial interest in trust for the other.

The vesting of the legal interest in one or either party at the time of the acquisition of the property, does not determine the issue of entitlement in the event of a breakup of the marriage.

The function of the Court, in relation to applications made pursuant to S. 16 of the Married Women's Property Act, was succinctly stated in **Anderson v. Anderson S.C. E 69/96**, a judgment delivered on 17<sup>th</sup> September 1998, where Courtney Orr J said:

"The task of the Court is to ascertain and declare what the rights of each party in the property are and not what they ought to be; and once those rights have been ascertained the Court cannot vary them merely because it thinks that in the light of subsequent events the original agreement between the parties is unfair. **Per Romer L.J. in Cobb v. Cobb (1995) 2 ALL. E.R. 696 at pg. 700.**

"Therefore, the first task of the Court is to determine if it can what agreement if any existed between the parties, at the time of acquiring the

property, and to discern from that agreement, the disposition of the legal and equitable interest in the property.”

Lord UpJohn represented his views in **Petit v. Petit (1969) 2 ALL. E.R. 385 at pg. 405**, thus:

“If the property in question, is land there must be some lease or conveyance, which showed how it was acquired. If that document declares in whom legal title is to vest and in whom the beneficial title is to vest that necessarily concluded the question of title as between the spouses for all time, and in the absence of fraud or mistake at the time of the transaction, the parties can’t go behind it at anytime there after even on the break-up of the marriage.”

If there is no agreement at the time of acquisition as to the equitable interest, then the Court’s task is to examine evidence to determine that interest.

In **Petit v. Petit, Lord UpJohn at pg. 407** said:

“The Property maybe conveyed into the names of both spouses jointly in which case parol evidence is admissible as to the beneficial ownership that was intended by them at the time of acquisition and if, has very frequently happens as between husband and wife, such evidence is not forthcoming, the Court may be able to draw inference as to their conduct. If

there is no such available evidence then what are called the presumptions come in play.”

The methodology to be employed in making the determination of the beneficial entitlement of the parties is not strict and formal

**In Mahibar v. Mahibar (1964) 7. WIR 131 at pg. 138 Wooding**

**C.J.** said:

“Beneficial ownership is not to be determined by strict rules since latitude must be allowed by reason of the casual informality which normally characterized arrangements between spouses.”

There was some difficulty in ascertaining the source of the respective income that funded the contribution for the acquisition of the properties.

The Respondent’s affidavit describes himself as a businessman, “whose business was more successful than that of the applicant.” The applicant refutes this and challenged the Respondent in cross-examination, that he was a “hustler” who she was not aware of as having a business, or for that matter, a nine to five job, but who would always have money and that he was involved in some illegimate activity. These suggestions were denied.

However, whilst the Respondent was incarcerated, the applicant obtained the sum of \$40,000.00 US on his behalf. The Applicant claims that

the bulk of this fund (save an amount of US \$5,000.00) was dissipated on the Respondent's legal expenses, and other expense peculiar to him.

The Applicant is described as an operator of a clothing store, which she say, in cross-examination, earned her \$55 - \$60,000.00 US per annum. There were no documents in support of the figures. In cross-examination it was suggested to her that she was a drug dealer who would transport marijuana from Boston to California, and who consorted with Mexican drug-dealers. These suggestions were denied.

I find as a matter of fact that the Applicant did receive \$40,000.00 US on behalf of the Respondent whilst he was in prison. I accept the evidence of the Respondent that at the time of receipt of these funds, his legal expenses for his criminal cases, would already have been settled.

The Applicant cites a source of funds in 1991. She said in cross-examination she got approximately \$60,000.00 US from the estate of her children's late father. She admitted in cross-examination that the funds were not for her personal use, but for the use of the children. The relevant children of the award resided in the United States. She has no account or note of how the money was spent. However, she did buy a Mercedes Benz for J\$1.7m in Jamaica, around that time.

If there is evidence of joint contribution it will be presumed that the parties intended to share equally. That presumption may be rebutted where the evidence supports a division that can be precisely ascertained or the contribution of one party is a not substantial.

**In Hall v. Hall Suit No. F/1995 H- 129** delivered April 24, 1998 Mr. Justice Langrin on an originating summons seeking declaration of ownership pursuant to S. 16 of the Married Women's Property Act, posited the view:

"Where the evidence shows substantial contribution whether in money or services or both, the maxim "Equality is Equity is applicable", and quoted with approval the dictum of **Carey J.A. in Joseph v. Joseph C.A. 13/84**, which was delivered in 1985:

"In the absence of express agreement on the part of the spouse, the Court will presume or impute that having jointly contributed they intended to share equally. That proportion will be altered only where either the share can be precisely ascertain or the contribution is trifling."

It is clear from the evidence that a contribution of \$40,000 US was made by the Respondent, which went directly into the hands of the applicant.

At paragraph 9 and 10 of Respondent's affidavit he depones:



(9) "That at the time of the purchase of the said property the same comprised a two bedroom one bathroom dwelling house with living and dining room area. The parties discussed the improvement of the property and agreed to send money in equal proportions towards the said improvement works. Construction on the property was commenced a few months after the purchase but was not completed until the early months of 1995."

(10) "That the delay in the completion of the said improvements was primarily due to the fact that the Applicant's relatives in the absence of any direct supervision from either or both parties squandered the moneys remitted to them on their personal use."

In respect of the property at Donmair Avenue, I find that the Respondent did make substantial contributions, which were used for improvements of the property

The Respondent had said he was a tailor by trade, whatever his trade, if trade it be, there was a source from which Respondent could have funded those contribution as evidenced by the \$40,000.00 US that went directly to the Applicant's hand.

In any event, on the Applicant's admission the remainder of US\$5,000.00, which went into the plan to buy the house, could not in 1991, be considered a trifling or inconsequential sum for the purchase of a house.

In respect of the property at Almond Drive. I find that the US\$40,000.00 was received prior to its acquisition. The arrangements between the parties were casual and informal as between married couples. I accept as a fact, that a substantial portion of the \$40,000.00 US went to acquire the Almond Drive Property.

I find that each party made a substantial contribution to the acquisition of Almond Drive and that the Respondent made substantial improvement to Donmair. The various contributions from the parties cannot be determined with any degree of precision

In **Rimmer v. Rimmer 1952 2 ALL. E.R. 863**, Sir R. Evershed M.R. said at pg. 867:

“I appreciate that to fall back in what maybe call a Solomonque Judgment is as Counsel for the husband said, perhaps to yield to the obvious temptation to shirk more difficult computations, but I do not think that is a just criticism of the conclusion at which I arrived. Where the Court is satisfied that both parties have a substantial beneficial interest and it is not fairly possible or right to assume some more precise calculations of their shares, I think that equality is equity.”

Accordingly it is hereby declared:

- (1) That the parties have equal beneficial interest in both properties.

- (2) That there be a valuation by a reputable firm.
- (3) Sale by a Private Treaty within four months, failing which by public auction.
- (4) That the Registrar of the Supreme Court, be empowered to sign any and all documents to effect a registered transfer if either party is unable or unwilling to do so.
- (5) All cost incidental to such sale and transfer to be borne equally by the parties.