

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY

SUIT NO. E506 OF 1994

IN THE MATTER of the MARRIED WOMEN'S
PROPERTY ACT.

A N D

IN THE MATTER OF RESPECTIVE PROPRIETORY
INTERESTS OF JULIET CHISHOLM AND GLENFORD
CHISHOLM IN THE LAND AND HOUSE SITUATED
AT 3 YOUNG STREET, SPANISH TOWN IN THE
PARISH OF ST. CATHERINE. AND PROPERTY
acquired through their joint efforts
generally.

BETWEEN JULIET CHISHOLM APPLICANT
A N D GLENFORD CHISHOLM RESPONDENT

Mr. M. Hussey instructed by Nancy J. Tulloch-Darby for Applicant.

Mr. Thomas Ramsay instructed by Tenn, Russell, Chin-Sang, Hamilton
and Ramsay for the Respondent.

HEARD: October 14, 15, and November 27,
1997.

LANGRIN, J.

JUDGMENT

By an Originating Summons under Section 16 of the Married
Women's Property Act the Applicant claims a beneficial interest of
the property and declarations from the Court as follows:

- (1) That she is the joint beneficial owner of premises

situated at 3 Young Street, Spanish Town P.O. in the parish of St. Catherine.

- (2) That she is entitled to one half of the beneficial interest in premises situated at 3 Young Street, Spanish Town, St. Catherine.
- (3) That the respondent husband pay to the applicant wife one half of the current market value of the aforesaid property within 3 months of the Order herein in the exchange for which sum the applicant wife shall give to the respondent husband a transfer of her one half interest in the said property.
- (4) That failing (3) above the premises be sold and the proceeds thereof applied as follows:
 - (a) Payment of costs of the sale
 - (b) Payment of the applicant Attorney's costs in this suit.
 - (c) Balance of the proceeds to be paid into Court - one half thereof to the credit of the applicant and a half thereof to the respondent.

The parties were married on the 21st June 1978. Before marriage they lived together for five years at 2 Sport Park Lane, Old Harbour, St. Catherine. At the end of that period they moved to 3 Young Street, Spanish Town, St. Catherine. There were 2 children born prior to the marriage and after the marriage four other children were born. She was only 15 years old when they started living together.

Paragraphs 8, 9, 10 and 11 of the applicant's early affidavit bear heavily on this case and are worth repeating:

- "8. That we decided to acquire premises situated at 3 Young Street, Spanish Town on or about the month of June, 1977. We had discussions regarding the purchase of the said premises, and the Defendant did not take the decision to purchase the premises entirely on his own. Both the Defendant and myself made all payments for the cost of the premises from the proceeds of the business.
9. I had to work long hours everyday from early mornings until late at nights, and I was never paid nor due any wages from the business, because everything from it had to go towards the acquisition of premises situated at 3 Young Street, Spanish Town in the parish of Saint Catherine.
10. That at the time of purchase of the said premises the Defendant and myself were very worried as to how we would raise the deposits of Thirty-six Thousand Dollars (\$36,000.00) to secure the purchase.
I gave the Defendant the sum of Twenty Thousand Dollars (\$20,000.00) which was the proceeds from an accident claim that I had made with respect to injuries I had sustained.
11. That prior to the purchase of 3 Young Street, Spanish Town the Defendant and myself had numerous discussions regarding the purchase of the said premises."

Under cross-examination the applicant said, when she met him in 1974 she was going to school. She was not working in 1977 because she was in a state of pregnancy with Christopher, her second child. Her respondent husband in 1976 used to work at Bagasse Factory and he did not operate a business then. He started "Big G. Enterprises in 1977. The business sold Cooking Gas, Gas Stove, Stove parts and cylinders. The place was rented as a shop. She did not put any money in "Big G" when it started in June 1977. The premises cost \$36,000. She came across a receipt in the store-room which her respondent husband got from Mrs. Vassell the owner of the premises. This has not been challenged. Her husband took care of all the household expenses.

The respondent at paragraph 9 of his initial affidavit met the applicant's case head on. He deposed as under:

"9. That in relation to paragraph 10 of the said affidavit the following are my submissions:-

- (a) The plaintiff was never involved in any manner whatsoever with the raising of any of the deposits paid by myself to secure the said premises.
- (b) The plaintiff collected an amount of approximately Twenty thousand dollars (\$20,000) in or about the year 1977 representing damages flowing from an accident in which she was involved in or about the year 1973. I convinced her to lodge such amount in her name at the branch of the Bank of Nova Scotia Jamaica Limited located in Spanish Town in the parish of St. Catherine. I accompanied her

to the Bank and assisted her in opening the said account. I have no idea nor did I care what the plaintiff did with the said sum thereafter.

I never received any portion of it nor did I want it nor need it.

- (c) The Plaintiff and myself never had the numerous discussions with respect to the purchase of the said premises. The project was entirely mine. I earned and paid all the money required and I made all the decisions without any assistance whatsoever from the plaintiff."

At paragraph 11 of the applicant's affidavit she stated that what the respondent said in Paragraph 9 of his affidavit was not true.

When the applicant was cross-examined on this aspect of her affidavit she said she no longer had the Bank Book since the account was not active. Apart from the \$20,000.00 no other money was placed in this account. She had asked the Bank manager for the record of the account but because of the time lapse it could not be found. The respondent did not ask her to sign her name at the back of the cheque. When she gave him the cheque she was not married to him.

When the respondent was cross-examined he admitted that when the relationship started he was aware that she had been in an accident. In June of 1977 a cheque from an Insurance Company was paid over to her. The cheque came into his hands. He advised her to lodge the cheque to the bank. She was at the time pregnant with Christopher and so was not fully well so she asked the teller if she could sign

and leave. She did so but he remained.

When the cheque arrived he was working at Bagasse Factory at a wage of about \$80.00 per week. He used to do jobs on the side repairing stoves.

I did not find the respondent's evidence in relation to the insurance money worthy of belief. It is unlikely that the respondent in such position of dominance would not persuade the applicant to use her own funds to assist in the purchase of the premises. I find the applicant's evidence quite credible and moreso because it was supported by her mother, Monica Monroe who witnessed the handing over of the cheque to the respondent for \$20,000.00. On a balance of probabilities I fully accept the applicant's evidence.

The premises at 3 Young Street, Spanish Town was bought by the respondent in June, 1977, and it was during the same month of June 1977 the cheque of \$20,000 was paid over to her by the Insurance Company. What a remarkable coincidence! The transfer was being registered in his name only. This was the matrimonial home in which the parties lived before they got married in June 1978 and continued to live for several years, thereafter.

The respondent under re-examination by Mr. Ramsay said he received the \$19,500 from Bank of Nova Scotia which he paid as deposit towards the purchase of the premises. He used a truck as security for the loan. There was no documentary evidence to support this contention advanced by him.

There is no evidence to support the applicant's contention that she made a contribution to the business. On her own admission she did not put any money in the business. She seems to have spent

a great deal of her time taking care of her children so it is apparent that not much time would be left to devote to the business. The respondent admitted that the applicant worked for a short time but he compensated her even though she stole some of the money and goods. The applicant's contribution to the business was in my view minimal

The approach of the Court in determining the share in the beneficial interest in property which stands in the name of another is dependent on the law of trusts.

There is no concept of family assets known to the law. In questions as to title to property the question for the Court is "whose is this" and not "To whom shall this be given. Pettitt v. Pettitt (1969) 2 AER 393 per Lord Morris of Borthy Gest.

In Azan v. Azan (1988) SCCA 53/87 Forte, J.A. adopted the following analysis of the then Vice Chancellor in the case of Grant v. Edwards (1986) 2 ALL E.R. 426, 437.

"If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a beneficial interest has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated:

- (a) that there was a common intention that both should have a beneficial interest; and
- (b) that the claimant has acted to his or her detriment on the basis of that common intention."

As Forte J.A. went on to observe, an express agreement that there should be a joint beneficial interest will be sufficient. However, where there is no such agreement the common intention of

the parties may be inferred from their words or conduct.

In this case the applicant states that she handed over her insurance cheque to the respondent in order for him to purchase 3 Young Street coupled with a discussion on the subject. An inference may be drawn of a common intention to share in the beneficial interest in the property.

As to actions to the detriment of the claimant the law is clear that those actions must be related to and upon the faith of the common intention that the claimant should have a proprietary interest. In Grant v. Edwards (supra) Nourse L.J. at p.433 posed and answered for these purposes a very important question:

"So what sort of conduct is required?
In my judgment it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house. If she was not to have such an interest, she could reasonably be expected to go and live with her lover, but not, for example, to wield a 14lb. sledge hammer in the front garden. In adopting the latter kind of conduct she is seen to act to her detriment on the faith of the common intention."

In the instant case before me I find that there was evidence of common intention as well as that the applicant acted to her detriment in the required sense.

The respondent's subsequent marriage to the applicant and the fact that the marriage produced four more children makes the relevant inference quite inescapable.

In all the circumstances, I hold that a fair and remarkable share in the matrimonial property at 3 Young Street, Spanish Town, St. Catherine is one half. The beneficial interest of the applicant

in the said property is declared to be one-half share, I make no award in respect of the business on those premises.

Accordingly, it is hereby declared:

- (1) That the applicant is the joint beneficial owner of premises situated at 3 Young Street, Spanish Town, in the parish of St. Catherine.
- (2) That she is entitled to one half of the beneficial interest in premises situated at 3 Young Street, Spanish Town, St. Catherine.
- (3) That the respondent husband pay to the applicant wife one half of the current market value of the aforesaid property within three months of the Order herein in the exchange for which sum the applicant wife shall give to the respondent husband a transfer of her one half interest in the said property.
- (4) That failing (3) above the premises be sold and the proceeds thereof applied as follows:
 - (a) Payment of costs of the sale
 - (b) Balance of the proceeds to be paid into Court - one half thereof to the credit of the applicant and one half thereof to the respondent.

There shall be costs to the applicant to be agreed on taxed.