

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 2006/1353

BETWEEN	CARL EDWARDS	1 <sup>ST</sup> CLAIMANT
AND	MERLIN EDWARDS	2 <sup>ND</sup> CLAIMANT
AND	KEVIN EDWARDS	DEFENDANT

Mr. David Johnson instructed by Barry Johnson & Company for the Claimants

Ms. Jeroma Crossbourne instructed by Scott Bhoorasingh Bonnick for Defendant

Heard: November 23, December 9, 2009 and April 16, 2010

Whether presumption of advancement rebutted

**Sinclair-Haynes J**

Land, situate at 1 Printery Road, May Pen and registered at Volume 984 Folio 246 of the Register Book of Titles the subject of this claim, was acquired by Mr. Carl Edwards (first claimant) and a former wife. He became the sole owner in April 1987. On April 8 1987 whilst in the twilight of his years, he married Merlin Edwards (second claimant) who was considerably younger than he. On November 3, 1988, they adopted Mr. Kevin Edwards (defendant) who is the nephew of Mrs. Merlin Edwards.

On March 27, 2002, Mr. Carl Edwards, out of love and affection for his wife, added her name to the title. The defendant's name was also added. The issue to be determined is whether his name was added because his father intended to convey an interest in the property to him because of his natural love and affection for him or whether it was merely for convenience.

### **Claimant's Case**

They are urging the court to find that the defendant holds a beneficial interest in the property on trust for the claimants.

It is their contention that the addition of his name was entirely for convenience as Mr. Carl Edwards was advancing in age. Indeed, he was in his late seventies and desired to confer upon the defendant the requisite authority to deal with the land, the subject of this claim, in the event of his inability to do so.

### **Claimants' Evidence**

The claimants refute stridently the defendant's claim that the transfer was out of love and affection. There was never any intention to convey an interest in the property to him.

The facts relied on by the claimants to rebut the presumption of advancement are that the defendant was aware that his name was only added to the title for convenience and the defendant by his actions demonstrated that he knew that the first claimant had no intention to provide him with a gift. They assert that the defendant was informed that the transfer was being effected as a precautionary measure.

It is the claimants' evidence that the defendant was treated as a child of the family. After his graduation from high school at age 17, he was employed to the first claimant's printery business. He was duly remunerated.

It is the evidence of Mrs. Edwards that the defendant informed her that since he was into computers it was his wish to have a business in order to assist. He desired to acquire the body of a truck to put on the premises for that purpose. They both inspected the back of the premises and determined that the space was not large enough to accommodate a truck's body. The defendant asked her if he could utilize a piece of land which Mr. Carl Edwards had acquired to accommodate his dogs. This land adjoined the printery. She discussed the matter with Mr. Carl Edwards.

After a protracted period of deliberation, he finally agreed to allow him to use the land because the defendant was young and was not able to pay rent. The defendant erected the addition and further requested and obtained permission to erect a bathroom.

It is Mrs. Edwards further evidence that the defendant also advised her that he intended to get a loan from Jamaica National in order to acquire a piece of land. She never dissuaded him.

Upon the retirement of Mr. Carl Edwards, the defendant sought and obtained permission to continue the business with the assistance of Mrs. Edwards. He got married in January 2003 and he and his wife were permitted to reside on the property. In or about 2003, the relationship between the defendant and his wife and the claimants became acrimonious. Consequently, he and his wife were told to vacate the premises in November 2004.

### **Defendant's Evidence**

The defendant on the other hand is unwavering in his contention that the first claimant included his name to the title because of the natural love and affection he had for him. He claims that they represented to him that he had an interest in the property.

It is his evidence that upon leaving school in 1998 at 17 years he was employed to the printery for one year. At the expiration of that year, he left and pursued further education. In 2002 he decided to go into the business of providing computer repair services and courses in Information Technology. He discussed renting office space with Mrs. Edwards. She dissuaded him and encouraged him to build a room onto the printery since he had an interest in the property.

As a result of her persuasion he constructed onto the printery. He not only operated his business; he also assisted with the printery for which he was not remunerated. In or about 2002 or 2003, his father handed the printery over to him.

In 2003 he took steps to acquire property in a more convenient neighbourhood. Mrs. Edwards attempted to dissuade him. She told him that it was unnecessary expense since there was a home on the property for him.

Subsequently, problems developed between his wife and Mrs. Merlin Edwards shortly after they were married. Consequently, they were asked to leave the premises, however, he continued to operate the printery and his business.

It is his evidence that the relationship between him and the claimants had been close and loving. He is now surprised that the claimants are now claiming that his name was merely added as a matter of convenience. According to him, they are now seeking to retract the gift, because the relationship between his wife and Mrs. Edwards has soured.

**Submission by Mr. David Johnson**

Mr. David Johnson submits that the presumption of advancement has been rebutted. According to him, the evidence clearly demonstrates a lack of intention on the part of Carl Edwards to benefit the defendant. He submits that the clear business relation of the parties rebuts the presumption. The fact that the defendant was only permitted to build on the unregistered portion of land which adjoins the premises is a clear indication that a gift was never intended.

He further submits that the defendant's age and health fortify the position advanced by the claimant that the transfer was solely for convenience.

He further contends that such a gift to the defendant would result in the exclusion of the claimants' three children, two of whom are girls. In such circumstances, he contends that the defendant lacks credibility.

He also submits that the defendant acquired a loan because he knew he never had an interest in the property. If he knew he had an interest in the property, he would not have applied for the loan to purchase his own property.

The defendant denies speaking to Mrs. Edwards about erecting a building on the land although he acknowledges that he had a good relationship with the claimants and that matters concerning the family and the business were discussed. He also admits that he was treated like a son. In light of his acknowledgement, his evidence that he never discussed the matter with Mrs. Edwards ought to be rejected as not credible.

He further submits that the defendant did not assist with the purchase of the property.

**Submission by Ms. Jeroma Crossbourne for the Defendant**

Miss Jeroma Crossbourne submits that the presumption has not been rebutted. Mr. Carl Edwards seeks now to revoke the gift because of the breakdown in the relationship with the defendant's wife and Mrs. Edwards.

She submits that the evidence supports the presumption of advancement as the following evidence was elicited from Mr. Edwards in his deposition:

- (a) the defendant was accepted as a child of the family;
- (b) the claimant was a good father to the defendant and always provided for him;
- (c) he introduced him to the printery business because he was his son;
- (d) it was his hope that the defendant would take over the printery;
- (e) Mr. Edwards owned the premises prior to his marriage to the Mrs. Edwards;
- (f) Mrs. Edwards' name was added to other properties and not the defendant's;
- (g) Mrs. Edward's name was added to the bank account and not the defendant's;
- (h) her name was also added to the title. He therefore trusted the second claimant to handle his business.

There was therefore no need to add the defendant's name to the title or to do his business since Mrs. Edwards was capable of handling his affairs in his own estimation. This is evident since the defendant's name was not added to other properties. She submits that it supports the defendant's position that the addition of his name to the title is consistent with the defendant's evidence that a gift was intended and it was not merely for convenience.

## The Law

The defendant is the adopted child of Mr. Carl Edwards. There is therefore a presumption that a gift *inter vivos* was intended. The burden lies on Mr. Carl Edwards to rebut the presumption.

As stated by Lord Langdale MR in **Christy v Courtenay** 13th Beav. 96:

*“The rule of law is that when a father purchases property with money of his own, and takes a conveyance in the name of his child, the law presumes it to be an advancement for the child, and not a trust for the father; those who allege that it is a trust for the father are bound to prove it, and the evidence to be relied on for that purpose consists mainly if not exclusively of contemporaneous circumstances, which took place at the time of the transaction.”*

Viscount Simonds in **Shephard and Another v Cartwright and Others** 1954

3All ER 649 at p 654 said:

*“I conceive it possible, ... that there might be such a course of conduct by a child after a presumed advancement as to constitute an admission by him of parents original intention though such evidence should be guarded as jealously.”*

The following questions arise:

- (1) whether there was any such course of action by the defendant which constituted an admission by the defendant that he knew that his father did not intend to convey the property to him;
- (2) whether he was told at the time his name was added that he was not a beneficiary.

## Analysis of the Evidence

There is no evidence from Mr. Carl Edwards in his witness statement of any act or statement made to the defendant at the time he included the defendant's name on the title

or immediately after that he never intended to confer a gift on him. However, under cross examination, whilst his evidence was taken by the Resident Magistrate for Clarendon, he stated that he explained to the defendant that he had no interest in the property. Mrs. Edwards' evidence is that Mr. Carl Edwards made it clear to the defendant at the time the transfer was being effected that it was merely a precautionary measure because of Mr. Carl Edwards' advancing age.

I do not believe that Mr. Carl Edwards made any such statement contemporaneously or soon after the defendant's name was included on the title. It is the view of the court that the inclusion of those words by Mrs. Edwards is an effort to bolster their case. Also, I do not believe Mr. Edwards' testimony that he informed the defendant that he had no interest in the property.

Further, Mrs. Edwards is considerably younger than Mr. Carl Edwards. He clearly reposed confidence in her ability to conduct his business because he conferred upon her that authority by including her name on his bank account and other documents. It was his testimony before the Resident Magistrate, (who took his deposition pursuant to an Order of this Court) that he trusted her to handle his affairs which included selling his house and making withdrawals from his bank account. There was therefore no need to include the defendant on his title for that purpose

It is Mrs. Edwards' evidence that she never heard her husband inform the defendant that he had an interest in the property. Whether or not he was informed by Mr. Carl Edwards that he intended to give him a share in the property is immaterial. His name was placed on the title by his father who cannot revoke the gift unless he is able to rebut the presumption of advancement. In any event, I accept the evidence of the

defendant that he was told by Mrs. Edwards that it was unnecessary to acquire premises elsewhere because he had an interest in the property.

I cannot accept Mr. Johnson's submission that the defendant sought and obtained premises elsewhere because he knew that he had no interest in the property. On the other hand I accept the defendant's evidence that the location of the premises was more convenient for his business.

The submission of Mr. Johnson that the defendant is not a credible witness because the inclusion of his name on the title meant that Mr. Edwards' other three children would be deprived of property is untenable. Mr. Carl Edwards included Mrs. Edwards' name on other properties on which the defendant's name was not included. The claimants are therefore the owners of other properties. They are both at liberty to will or transfer their interests in those properties to these children. .

Mr. Johnson's submission that the defendant's desire to go into business on his own is an indication that he knew he had no interest in the property does not find favour with me. The fact that he desired to launch out on his own and lead an independent life does not derogate from the fact that his name was added to the title out of the natural love and affection which his father had for him.

I cannot accept Mr. Johnson's submission that the fact that the defendant built on the unregistered portion of land is indicative of a purely business relationship and that the parties understood that a gift was never intended. In this regard, I accept the evidence of Mrs. Edwards that upon viewing the back of the premises it was determined that it was too small to hold the body of a bus. As a result, the piece of land which accommodated the dogs was utilized.

The defendant was a relatively young man. His name had only been recently included on the title. His father was obviously in charge. It is not unreasonable therefore that his father's word on the matter would be solicited and respected.

Indeed, the defendant would have had an undivided portion of the land. He could not without the consent of the claimants, who were his parents and whose names were also on the title, construct any building wherever he pleased on the land. The fact that he sought and obtained the permission of his father is not supportive of the view that he knew that Mr. Edwards did not intend to confer a gift of the premises to him.

It is Mr. Carl Edwards' evidence that there was no agreement, understanding or common intention between the defendant and him to hold an interest in the property. Further, it is the claimants' evidence and that of the defendant that he did not contribute to the purchase of the property. In the circumstances, they have asked the court to find that the defendant holds a beneficial interest in the property on his behalf.

The claimants' aforesaid contention is predicated on a fallacy that in the circumstances of this case, the defendant's intention, agreement or contribution is important. On the contrary, what is of importance is the intention of Mr. Carl Edwards, the father of the defendant, at the time the conveyance was made.

I find that the claimants have failed to rebut the presumption of advancement. I find that Mr. Carl Edwards, at the time he included the defendant's name on the title, intended to convey a share in the property to him because of the love and affection which he had for him.

In the circumstances, the claimants' case is dismissed.