

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. 2006 HCV 03415

BETWEEN	RICHARD ELLIOTT	CLAIMANT
AND	SHARON BROWN ELLIOTT	DEFENDANT

Mr. E. O. Davis for Claimant.

Mr. Bert Samuels and Ms. Jaqueline Wilcott for Defendant.

Coram: D. MCINTOSH J

HEARD: 17th July, 2007

CAV 17th September, 2007

The claimant by way of Fixed Date Claim Form, filed on the 1st September 2006, seeks to have two properties sold and the net proceeds divided equally between the parties. In seeking a one half share of each of the properties, he brings his claim under "The Property (Rights of Spouses) Act 2004".

The properties are:

- (i) 3 Plantation Heights, Red Hills in St. Andrew, registered at Volume 1174 Folio 656.

and

- (ii) 11 Cunningham Avenue, Kingston in St. Andrew, registered at Volume 402 Folio 67.

Both parties appeared in court and were cross examined. The claimant proved to be an unreliable witness and his credibility was destroyed. The defendant was a credible witness.

There was conclusive evidence that Sylvia Salkey, the mother of the defendant was the person who made the down-payments on both properties. It was she who had her daughter's name (defendant) placed on them as a 'Joint Tenant'.

The evidence indicates that the claimant made absolutely no contribution to the acquisition of either of these two properties.

At the time that the claimant brought this suit he knew that the titles to both properties were in the names of Sylvia Salkey and the defendant as Joint Tenants. None the less he claims a one half share in both properties, completely ignoring the registered rights of one of the Joint tenant, Sylvia Salkey.

The evidence is that the house at Plantation Heights was bought before the marriage of the parties and the court accepts the evidence of the defendant that Sylvia Salkey at the time of the purchase did not know the claimant. There is no evidence of any transaction to defeat her interest in the Plantation property.

This court accepts the evidence that the property at Cunningham Avenue was bought by Sylvia Salkey as an investment towards securing a pension for herself.

There is conclusive evidence that when Sylvia Salkey intended to confer a benefit on the claimant, she did so directly as was done when she bought him a motor car and his claim of a gift to him, relating to the Cunningham property is rejected.

The claimant describes himself as a business man. He certainly is a successful Restaurateur. He has been the holder of a drivers licence for many years and must be presumed to be at least functionally literate. There is certainly no evidence of defendant using her intelligence or position to his detriment. All the evidence points to the claimant manipulating the defendant and becoming a successful business man at her expense.

Section 2(i) of the Property (Rights of Spouses) Act, 2004, speaks to the family home being wholly owned by either or both spouses. Clearly, the Plantation Heights Property does not fall within the ambit of the Act.

The claimant has failed to show that he made any contribution to the acquisition of the properties or that there was a common intent that he was to have a share in either of them and that he acted to his detriment in reliance on any such common intention.

Any contributions he may have made towards getting the property at Cunningham Avenue repaired after the hurricane, was no more than the actions of a husband in the particular circumstances.

On a totality of the evidence, this court finds the claim to be completely misconceived and must be dismissed with costs to the defendant, to be taxed if not agreed.

Court further orders that caveat 1260775 be removed forthwith from the
title of:

11 Cunningham Avenue, registered at Volume 402 Folio 67.