

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

SUIT NO. HCV 2384 of 2003

BETWEEN ROSEMARIE FORBES CLAIMANT

AND CECIL DAWSON DEFENDANT

Miss Arlene Beckford instructed by Brown, Godfrey & Morgan for the Claimant.

Miss Judith Clarke instructed by Judith M. Clarke & Co. for the Defendant.

Trust- Claim for declaration of a beneficial interest in business

enterprise and in real property- whether business was a joint enterprise

Heard: 23rd & 30th June, 2006

BROOKS J.

The phone-card business can be a very profitable venture. Like any other business however it must require the application of technique, acumen and expertise, in order to secure high levels of profit. Miss Rosemarie Forbes says that she developed such a business and that she was unceremoniously ejected from it by Mr. Cecil Dawson with whom she then lived and shared an intimate relationship. She claims a declaration that she is entitled to a share of the business and of a house which she says was substantially improved by profits generated by that business, through the joint efforts of Mr. Dawson and herself.

Mr. Dawson, for his part, states that it was he who started the business and used his knowledge and expertise gained from similar enterprises, to nurture and build it. He asserts that Miss Forbes was an employee and not a principal of the business. He denies that she is entitled to any interest whatsoever.

The issue in the claim is largely a question as to fact. I shall outline the evidence given by each party and then assess it for the purposes of drawing a conclusion.

Miss Forbes' Case

In her Particulars of Claim Miss Forbes averred that she conceived the idea of opening a phone-card business. She said in that document that she discussed the idea with Mr. Dawson with whom she was living and he **loaned** her \$180,000.00 as start up capital. She averred that within three months she was grossing sales in excess of \$1,000,000.00 per month on average. She said that she **repaid** the loan. In her pleadings she asserted that Mr. Dawson eventually joined the business and they operated as equal partners, expanding the business from one to three locations and securing a contract with Digicel, which is cellular service provider.

On a personal note there were, according to her, overtures of marriage from Mr. Dawson and on his promise to place her name on the title of their home,

which was registered in his sole name, she allowed him to use income from the business to improve that property. She has conceded that he initially acquired that property without any financial input from her.

According to the pleadings the personal relationship broke down and Mr. Dawson moved out of the home. The split carried over to the business and Miss Forbes averred that Mr. Dawson has refused her entry to the various stores and has operated the business for his sole benefit.

The evidence proved to deviate somewhat from the pleadings. Miss Forbes testified that Mr. Dawson encouraged her to start the business and **gave** her \$189,000.00 to cover the first stock, office equipment and rental. She said she did not put in any capital of her own at that time.

In response to suggestions she denied that Mr. Dawson had employed her to work in his phone-card business, though she admitted that for some time before the business was started, she was unemployed and was being maintained by Mr. Dawson, she and her two children.

Mr. Dawson's Case

Mr. Dawson both in his pleadings and in evidence revealed a situation of dependency by Miss Forbes from the beginning of their relationship. He testified that she was unemployed and he assisted her by getting a job for her. When that job fizzled after a short while, he says that

he paid her to baby-sit his son at her home. She was then living at her mother's house. He said they formed an intimate relationship shortly afterwards. He testified that her mother put her out and she came to live with him and for the rest of the time that they were together he maintained her and her children, from previous relationships. Against that background, Mr. Dawson's situation was that he was then a phone-card distributor with Cable and Wireless Jamaica Limited. He says that arising from his experience and contacts acquired during his employment with that company, he started his own phone-card business. He was able to give the details of how he negotiated with his suppliers; a Mr. Fong and a company called Saturn Sales Limited. He testified that it was he who rented the first shop from a Mr. Oliver Hutchinson. This was not contradicted by Miss Forbes. He testified that he employed her to sell phone-cards at the store and that he paid her \$3,000.00 per week in cash. It was only for convenience, he said, that her name was on the business' current account, but that he was the person who made all deposits.

Mr. Dawson denied that he ever made any overtures of marriage to Miss Forbes, or that he promised to put her name on the title for the real property which was their home.

Mr. Dawson called witnesses who supported his evidence, they were admittedly friends of his and so their evidence must be considered against that background.

Findings of Fact

The preponderance of the evidence was in Mr. Dawson's favour. The balance of probabilities were more in keeping with a person who had the knowledge, capital and contacts to start a business, than a neophyte whose prior experience was not in business.

In addition, Miss Forbes' demeanour in the witness box was not convincing. She did not present the picture of a business woman who knew the intricacies of her business. She was frequently hesitant in answering questions in cross-examination. I found her to be untruthful in relation to the way in which she came to start taking care of Mr. Dawson's son. I find that Mr. Dawson paid to her the sum of \$1,500.00 per week to look after the child at her home. I find it unlikely that an unemployed woman, living in her mother's home, would take in a child for care, without monetary compensation, when the child's father was able to pay for his keep.

I find that Mr. Dawson, not only took care of her financially, but he employed her and paid her for working at his establishment. I reject her

evidence that she started this business. I find that it was his business; started and operated on the basis of his know-how, capital and contacts.

It is not without significance that at the time of this trial Miss Forbes is not a businesswoman, selling phone-cards or anything else. Instead she is a secretary, living in Mr. Dawson's house, (which he has vacated) without the benefit of electricity. That situation is in contrast with that of an individual with the entrepreneurial spirit of starting and operating a business generating a million dollars in sales on a monthly basis. It is not that such an individual could not fall on hard times and be forced to take paid employment, but I find that Miss Forbes' current employed status is more in keeping with the picture that Mr. Dawson's evidence has painted of her.

Conclusion

Based on my findings of fact, there is no basis for Miss Forbes being awarded any share or part of Mr. Dawson's business.

I agree with Miss Clarke, who appeared for Mr. Dawson that the principles of law are also against Miss Forbes obtaining a beneficial interest in Mr. Dawson's house. Miss Forbes has claimed her interest on the basis of the financial contribution which, on her case, was generated from monies from the business. In light of my finding that she had no interest in the business, her claim of an interest in the house, on that basis would also fail.

This situation is not akin to that of *Nixon v. Nixon* [1969] 3 All E.R. 1133, which Miss Forbes' Attorney-at-Law, Miss Beckford cited. Miss Forbes' situation is unlike that of Mrs. Nixon who spent many years working alongside her husband in developing and expanding a business, without being paid. Miss Forbes was paid, on my finding, and her contribution to the phone-card business, commenced in or about the middle of 2001 and ended in or about December 2002; a period of less than two years.

Mr. Dawson's Counterclaim

In his counterclaim Mr. Dawson claimed an order for the recovery of possession of the premises at 97 Douglas Road, Gazeland Meadows, Santa Cruz in the parish of Saint Elizabeth. There is however, a pre-existing claim in the Resident Magistrate's Court for the parish of Manchester for the recovery of those premises. Mr. Dawson should pursue that claim.

The order of the court therefore is:

1. There shall be judgment for the Defendant on the Claim
2. The Defendant's Counterclaim is dismissed
3. Costs to the Defendant on the claim to be taxed if not agreed.