

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 427 OF 1999

**BETWEEN**            **ESMIE HEALE**            **PLAINTIFF**  
**AND**                **MICHEAL HEALE**            **DEFENDANT**

Mr. Debayo Adedipe for Plaintiff

Mr. Gordon Steer for Defendant

**HEARD: 8<sup>TH</sup> December, 1999 and 31<sup>ST</sup> May 2002**

**JAMES G.G. J**

By Originating Summons dated 15<sup>th</sup> October, 1999 the Plaintiff seeks the following:-

- “(i) A grant of an injunction restraining MICHAEL HEALE by himself, his servants and/or agents or howsoever otherwise from selling, mortgaging, further mortgaging, leasing, pledging or otherwise disposing of or dealing with any or all of the properties at 54 Ward Avenue, Mandeville, 19 Manchester Road, Mandeville and Mandeville Plaza, Mandeville all in the parish of Manchester.
- (ii) A declaration that the Plaintiff is entitled to at least a half share of the said properties.
- (iii) An order that the said Michael Heale account for all moneys obtained or received by using any or all of the said properties as security for advances.”

The parties were married in Toronto, Canada on the 4<sup>th</sup> day of August, 1978. They lived together as man and wife in several places until the Defendant left the matrimonial home at 54 Ward Avenue, Mandeville consequent on the breakdown of the marriage. There are four children of the marriage.

### **The Plaintiff's Case**

The Plaintiff's case is that she worked and contributed significantly to the family purse at all material times during the marriage.

In or about the year 1988 the defendant's father, George Percival Heale, told the parties that he was preparing to retire and he wanted to turn over his business and properties to them. He wanted to transfer his assets to them 'through the husband Michael'.

The properties are as follows :-

“54 Ward Avenue, Mandeville - Volume 1211  
780 of the Register Book of Titles

19 Manchester Road, Mandeville - Volume 1154  
Folio 995 of the Register Book of Titles

16 Mandeville Plaza Mandeville - Volume 1042  
Folio 505 of the Register Book of Titles”.

The offer by George Percival Heale required that both parties – agree to return to settle in Jamaica. As a result the defendant ‘begged’ the plaintiff to return to Jamaica. At first the plaintiff was unwilling to return and settle in Jamaica but she eventually relented and returned to Jamaica with the couples’ two younger children. This decision entailed that the plaintiff resign from the job as a supervisor at KMART Corporation in the United States.

In her affidavit the plaintiff stated that it was the common intention and understanding of both parties at all material times that the properties at 54 Ward Avenue and 19 Manchester Road, Mandeville and 16 Mandeville Plaza was and would remain their joint property.

The parties sold a house which they owned jointly at Palm Bay, Florida. This was in or about the year 1995. The net proceeds of the sale was used to finance extensive renovation works on the house at 54 Ward Avenue, Mandeville.

In April, 1996 the plaintiff returned to Jamaica and took over the business at 19 Manchester Road, Mandeville. From the proceeds of the business the plaintiff met most of the family expenses. These expenses include school fees for the two younger children, clothing, medical expenses and other domestic expenses.

### The Defendant's Case

The defendant is a businessman. He agrees that he and the plaintiff were married in Canada in August, 1978.

In March, 1979 the plaintiff and two children joined him in the United States of America.

The defendant was employed as an Aircraft Technician and his salary was lodged to a chequing account in both his and his wife's names, the wife paid the bills therefrom. According to the defendant it is not true to say that plaintiff contributed significantly to the family purse but she contributed what she had.

In paragraph nine [9] of his affidavit dated 12<sup>th</sup> November, 1999 the defendant stated as follows :-

“.....it is true to say that my father came to our home in the United States of America. My father said he wanted to retire and he wanted us to have his business which was situated at 19 Manchester Road in Mandeville.”

Later in his affidavit the defendant stated that his wife refused the offer to return to Jamaica. He also stated that his father at no time promised any of his properties to the plaintiff or to himself and his wife jointly. The father's offer referred to the business and no mention was made of his properties.

The net proceeds of the sale of the house in Florida was used to defray living expenses and had nothing to do with the cost of renovating 54 Ward Avenue such costs were met from Bank loans and the defendant was solely responsible for repaying such loans.

### **Conclusions**

Having carefully considered the evidence I conclude as follows :-

- (1) In or about the year 1988 the defendant's father offered to 'turn over' his interest in the business and property situated at 19 Manchester Road, Mandeville to both parties;
- (2) This property was owned jointly by his father George Percival Heale and the defendant;
- (3) The defendant persuaded the plaintiff to return to Jamaica to take up the father's offer;
- (4) In 1996 the plaintiff returned to Jamaica and took over the business at 19 Manchester Road, Mandeville.

Accordingly, I order as follows :-

- (1) An injunction restraining Michael Heale by himself, his servants and/agents from selling, mortgaging, further mortgaging, leasing, pledging or otherwise disposing of or dealing with the property at 19 Manchester Road, Mandeville in

the parish of Manchester, Registered at Volume 1154 Folio 995 of the Register Book of Titles.

- (2) A declaration that the Plaintiff is entitled to one half share of the said property situated at 19 Manchester Road.
- (3) An order that the said Michael Heale account for all moneys obtained or received by using the said property as security for advances.
- (4) It is further declared that the Plaintiff has no interest in 54 Ward Avenue, Mandeville Volume 1211 Folio, 19 Manchester Road, Mandeville Volume 1154 Folio 995 and 16 Mandeville Plaza, Mandeville, Volume 1042 Folio 505.

No order as to costs.