

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 327 OF 2002

In the Matter of the Married
Women's Property Act

A N D

In the matter of the Division of
Property

BETWEEN JOSEPHINE LYONS APPLICANT
A N D VERNON LYONS DEFENDANT

Mr. Lawrence Haynes for the Applicant

Mr. Michael Palmer instructed by Palmer, Smart
& Co. for the Defendant

Heard: 2nd, 15th March and 21st May, 2004

MANGATAL J.

1. This application is by a wife against her husband pursuant to the Married Women's Property Act. When the Originating Summons was filed in May 2002 six categories of relief were claimed. Happily, the parties were able to amicably resolve three of those issues, leaving three to be resolved by the Court.

2. The parties have agreed that the Applicant is legally entitled to a half share of the matrimonial home situate at 24 East Street, Savannah-la-mar, Westmoreland. They have also agreed that the Applicant is entitled to a half share of premises situate at 74 Great Georges Street, Savannah-la-mar in the Parish of Westmoreland and that 1998 Honda Accord motor vehicle Registration No. 0494VW is exclusively the Applicant's property.
3. The Applicant filed an Affidavit and the Defendant filed an Affidavit and Supplemental Affidavit. A Further Supplemental Affidavit was filed in April 2003 on behalf of the Defendant. However, as it was not served, the Defendant's attorney did not refer to or rely on it. Both parties have been cross-examined.

Issue 1

4. The Applicant claims that she is entitled to a half share of the business-concern known as "One Stop Liquor and Variety Store". The Defendant in paragraph 4 of his Supplemental Affidavit has indicated that he has no objection to an account being taken of this business, and has no objection to both parties sharing the assets and liabilities. However, the position

he takes is that based on her contribution the Applicant is only entitled to a 25 percent share of the business. In that regard he states that the Applicant contributed neither money nor labour to the business in lieu of salary.

Issue 2

5. The Applicant claims to be legally and beneficially entitled to Four properties situate at Llandilo in the parish of Westmoreland and known as Lots Numbered 303, 306, 115 and 320.

Issue 3

6. The Applicant claims to be legally and beneficially entitled to half share of premises consisting of 7 lots at Farm Pen, or Lee Park Savannah-la-mar in the parish of Westmoreland.
7. The Applicant's evidence is that the parties married in 1975 and had three (3) children, the youngest being Dwight born on 2nd July, 1984. When the parties married she was working at the Department of Statistics and the Defendant was a teacher. After they got married the Defendant moved into premises, which Applicant had been renting at Petersfield, Westmoreland. The Applicant eventually left her job at the Department of

Statistics and went into business full-time. The Defendant changed jobs and occupations several times and was unemployed upon a number of occasions. In 1979 the Defendant had been unemployed for sometime until he sold an Austin Mini 1000 which the Applicant had owned before the marriage and used the proceeds to buy a minibus which he operated.

8. At this time in 1979 the Applicant left for the United States where she initially worked as a domestic helper and later as a Nursing Assistant. She remained in the United States from 1979 to 1986 and throughout that time she remitted an average of three hundred United States dollars per month to the Defendant for maintenance of the household and for savings. She exhibited three remittance advise forms as samples of amounts sent to the Defendant by her. She additionally sent home to the Defendant most of the household items, clothing and groceries required by the children and the Defendant for day to day living.
9. The Applicant states that from the savings which arose from her

remittances, in or around the year 1982 the Defendant was able to open the liquor store business "One Stop Liquor Store" at 63 Great Georges Street, Savannah-la-mar in the parish of Westmoreland.

10. The Applicant exhibited letter dated 12th August 1981 "JL4" from the Defendant to her. Her Counsel submitted that in this letter the Defendant acknowledged her contributions and requested her to send funds from the United States.
11. In or around 1984 the matrimonial home at East Street was acquired at the price of One Hundred and Thirty-five Thousand Dollars. This money came from the remittances sent by the Applicant, also from a lump sum which she brought home from the United States of America at the closing of the purchase.
12. In 1986 the Defendant invited the Applicant to return to Jamaica permanently because as he put it, having acquired the matrimonial home, "We can now live". The Applicant returned and joined him in the liquor store business. She proceeded to work with the Defendant in the liquor store business as the cashier. She did so without drawing a salary, save and except money for groceries and for household items.

13. The Applicant says that matters went well until about 1988 when she discovered that the Defendant was carrying on a relationship with another woman.
14. Sometime in 1990 the parties learnt that the premises at 74 Great Georges Street were up for sale and they decided to build a commercial complex on the site. Construction was completed in 1991.
15. The Applicant states that she continued to work in the business without a salary until March 2001. During this period the Defendant made the following acquisitions from the proceeds of the business:-
 - (a) Premises situate at Shantilly, Savannah-la-mar, which was subsequently sold by the Defendant without accounting to her.
 - (b) 4 lots of land situate at Llandilo, Phase 3, Savannah-la-mar, Westmoreland, being Lots Nos. 303, 306, 115 and 320.
 - (c) 7 Lots at Farm Pen, Savannah-la-mar in the parish of Westmoreland.

16. Sometime in March 2001 the Defendant started one of the controversial pyramid schemes called the "Partner Plan". The Applicant objected to it. The Defendant was insistent and in an argument assaulted the Applicant. Arising out of the dispute, the Defendant barred her from returning to the business premises on 28th March 2001.
17. The Defendant in his response, indicated that he was never unemployed and that he worked at various periods as a teacher, field officer in the insurance industry, in the distribution business and part-time as a minibus operator.
18. During the time while the Applicant worked in the United States of America she sent a few things, but he denied that she sent clothing and groceries received by the children and himself.
19. The Applicant knew nothing about the opening of the liquor store known as "One Stop Liquor Store". He says he borrowed \$19,000.00 from National Commercial Bank "N.C.B." to start the business in November 1987 and he purchased stock from Daley Distributors, with whom he used to work. He was also given an overdraft of \$5,000 from N.C.B. The Defendant

denied saving from the Applicant's remittances from the United States.

20. In or around 1998 the Applicant spent seven months in the United States earning \$1,000.00 U.S. per week. The matrimonial home was purchased and a deposit of \$10,000.00 was paid with an overdraft from N.C.B.. When the Applicant returned home, she brought \$6,000.00 U.S. The house had already been purchased.
21. The Defendant denies that the Applicant worked in the liquor store business without drawing a salary as she was allowed to take any money without accounting and the Defendant purchased a new Honda Accord motor car every 3 years for the Applicant.
22. The premises at 74 Great Georges Street were purchased in 1988 by the Defendant who says he borrowed half a million dollars from N.C.B. to purchase the land and he secured other loans to construct the building.
23. The premises at Chantilly Sav-la-Mar, Llandilo Phase III and lots at Farm Pen were purchased from loans from N.C.B and Bank of Nova Scotia, the premises at Chantilly have been sold

and titles have not yet been issued. Two of the three lots at Llandilo Phase III have been sold and only deposits have been paid on the lots at Farm Pen, Westmoreland.

24. The Defendant denied any cruelty to the Applicant or that he assaulted her.
25. The Defendant states that the intention of the parties was to share the matrimonial house and premises at 74 Great Georges Street equally and that the other assets were to be shared among the children. He states that the Applicant has now sought to repudiate the intention of the parties by action or words.
26. The real estate at Llandilo and Farm Pen, Westmoreland, were for the children. He says Lot 320 at Llandilo was sold and Lot 303 is incomplete. He says there is no Lot 115 and Lot 306 has been promised to his step-daughter Marvaline Gayle. It would seem that Lot 115 is actually Lot 315.
27. The Defendant attached to his Supplemental Affidavit copies of statements from Omar Lyons and Marvaline Gayle purportedly notarized (only copies were produced to the Court in bundle). These statements speak solely to conversations between the Defendant and Marvaline Gayle and Omar Lyons and do not

purport to say that the Applicant was involved in or privy to such discussions. They do not in my view assist me in determining what was the common intention of the Applicant and the Defendant.

28. In cross examination, the Defendant said he discussed the purchases of the lands at Llandilo and Farm Pen with the Applicant prior to the purchases. He did not however, discuss particular prices with her or the number of lots involved in the purchase. He discussed with the Applicant the fact that he would be obtaining loans to finance the purchases, but he did not discuss with her how much loan he would be saddling the business with. Although he discussed with the Applicant the fact that these investments were for the children, he did not discuss who would get which lot. He did not show the Applicant the Agreements for Sale in relation to Llandilo and Lee Park. The Applicant saw the Titles at the store.
29. The four (4) Lots at Llandilo were bought for \$1.6 million each. They were sold for not less than \$2 million each. The Defendant says that he made a loss and therefore there are no monies available to be given to the children.

30. As regards the seven (7) Lots at Farm Pen, he says they were on a course to make a loss. He has not provided the Applicant with any accounting. In response to questions to do with the Defendant's knowledge of the Applicant's monthly expenses and whether the Defendant had stopped paying the Applicant's bills or giving her money, the Defendant said that he assumes that the Applicant is a diabetic. He said she requires medications on a monthly basis, but he doesn't know why.
31. Under cross-examination, the Applicant said that she would go and sign for loans at Bank of Nova Scotia on the Defendant's say so. She thought on one occasion it was for money to fix up the houses. She denied signing loan documents for the properties at Llandilo and Farm Pen. She said that in 1998 she signed a Scotia Bank loan for \$3.5million for renovation of the house. She refused to sign for loans when the Defendant overdrew on the overdraft on the business account and that is when she realized that the money was being used to purchase these properties.
32. She denied knowing and discussing with the Defendant or

agreeing that the properties were purchased as investments for the children. It was not the common intention of the parties that these properties were investments for the welfare of the children.

33. The Applicant indicated that she did not know whether Omar, one of the sons, is going to school. She knows Dwight is going to school but she does not remember the name of the school. She says she does not know if Omar is doing his Ph.D; he “sticks” with his father.
34. She said that the Defendant told her he had received an offer to purchase the complex at Great Georges Street. She refused to be a party to that and she asked the Defendant why he was selling out when they have children.
35. The Applicant also indicated that when she found out about the properties purchased at Llandilo she instructed an attorney to write to the Defendant requesting the Defendant to put her name on the titles. The Defendant admitted he got the letter and remarked that he did not know what the Applicant and her lawyer were cooking up. The Applicant never got a response to the lawyer’s letter from any attorney.

36. On the 3rd November 2003 an Order was made by Mr. Justice Anderson that the Defendant provide disclosure of documents to demonstrate net profits of assets in respect of the business "One Stop Liquor and Variety Store". The Defendant was also ordered to pay over the share which he conceded the Applicant is due, that is 25% of the net proceeds on a monthly basis. It was also ordered that there be disclosure of all documents relevant to the acquisition and disposal of the lots of land at Llandilo and Farm Pen.

37. By List dated 21st November 2003, the Defendant disclosed the following:-

- a. Income and expenditure Statement for "One Stop Liquor & Variety Store" for the period 1st January to 31st October 2003.
- b. Agreement for Sale dated 14th August 1995 regarding the purchase of Lots 6-12 part of Lee Park Gardens.
- c. Land Contract Agreement to nominate and agreement for construction of a house dated 28th September 1995 for Lot No. 320 Llandilo Phase III.

The Defendant indicated that with the exception of the acquisition of Lot 320, the documents relevant to the acquisition of Lots 303, 306, 315 cannot be found and that he could not recall which attorney had carriage of sale. During cross-examination the Defendant admitted that the Court only has his word that he cannot find the documents in respect of the other lots. It is to be noted that there was no disclosure whatever of any loan documentation to support the Defendant's claim that the lots were acquired by way of loan.

38. The principles to be applied in these circumstances have been discussed in a number of cases including **Gissing v. Gissing** [1971] A.C. 886, **Grant v. Edwards** [1986] Ch. 638, **Azan v Azan** 25 J.L.R 301, and **Green v. Green**, Privy Council Appeal No. 4 of 2002.
39. *“The question in all these cases is whether a common intention can be inferred from the parties’ words or conduct. It is for the court to determine what inferences can reasonably be drawn, and each case must depend on its own facts. Where the most likely inference from the parties’ conduct is that the beneficial interest was not to belong solely to the party in whom the legal title is vested, the court must determine what in all the circumstances is a fair share”* Paragraph 11 of **Green v. Green** per Lord Hope of Craighead.

40. In **Green v. Green** paragraph 12 Lord Hope described the analysis by Sir Nicholas Browne-Wilkinson V.C. in **Grant v. Edwards** as especially helpful and summarized as follows:-

“Two matters need to be demonstrated to establish a constructive trust ... The first is that it must be shown that there was a common intention that both parties should have a beneficial interest in the property. Where parties have not used express words to communicate their intention with the result that there is no direct evidence of it, their intention can be inferred from their actings or from other circumstances. The second is that it must be shown that the claimant has acted to his or her detriment on the basis of that common intention. There must be a sufficient link between the common intention and the conduct which is relied upon to show that the claimant has acted on the common intention to his detriment ... this requires there to have been conduct on which the claimant could not reasonably have been expected to embark unless he was to have an interest in the property.”

41. The cases in this area have usually been founded on the existence of an implied, resulting or constructive trust. This is because there is in the majority of cases as is the case here, no written document sufficient to satisfy the formal requirements of the Statute of Frauds. Nor is there usually an express trust with the appropriate formalities. It will be seen that there has often been in the leading decisions a blurring of distinctions

between implied, constructive or resulting trusts. As it turns out, these distinctions are not vital in determining the entitlements of the parties in this case.

Issue No. 1 The Applicant's Claim in respect of the business concern "One Stop Liquor & Variety Store"

42. The Defendant has claimed that the Applicant is entitled to only 25% share as he claims that she contributed neither money nor labour to the business in lieu of salary. I accept that the pattern of conduct of the parties was to acquire things jointly and to pool resources. I find that the common intention was that they would have equal interests in the business and that the Applicant acted upon that common intention to her detriment. The parties bought the matrimonial home at East Street and the business premises at 74 Great Georges Street in both names. The applicant worked in the business it is submitted on her behalf, not as a paid employee, but as part-owner. I accept Counsel for the Applicant's submission that paragraph 9 of the Defendant's Affidavit supports the Applicant's claim and I so find her to be a part-owner. In that paragraph the Defendant denies that the Applicant worked in the liquor business without

drawing a salary as she was allowed to take any money without accounting. I accept Mr. Haynes' submission that the only person usually allowed to take anything from a business without accounting is a part-owner. I accept the Applicant's evidence that the Defendant was enabled to open the Liquor Store business using savings from remittances she sent from the United States. The Liquor business was started somewhere between 1981-82. Although the Defendant claims that he started the business in 1981 with loans and overdraft from N.C.B., there was no attempt to prove this financing by way of documenting evidence. On the other hand, the Applicant says the Defendant started the business in or around 1982 and in Exhibit "JL4" letter dated 12th August 1981 the Defendant is clearly asking the Applicant to send some money to him from the United States. I found that "JL4" is supportive of the Applicant's claim to an equal share in the business. From the parties manner of acting and conduct it is clear to me that the intention was that they would share and share alike in the business, as with everything else. I find that the Applicant acted to her detriment in sending and contributing funds from

the United States and in working as a cashier since 1986, essentially not drawing any salary.

43. In addition, I agree with the Applicant's Attorney that in the body of the Affidavits the Defendant is not so much denying that the Applicant is entitled to a half share in the business, as he is saying that she agreed with him to buy the lands at Llandilo and Farm Pen as an investment for the children.
44. I wish to say a word about my assessment of the credibility of the parties and their demeanour. I found the Applicant a more credible and forthright witness than the Defendant. In terms of credibility, I found it more plausible that the Applicant did in fact contribute the funds which she says she contributed to the purchase of the matrimonial home by bringing home U.S funds at the stage of closing, rather than that she brought funds after the premises were already purchased, according to the Defendant. I formed the view that the Defendant minimized the Applicant's role in the parties' advancement and acquisitions over the years. I also found it somewhat incredulous that the Defendant would say, as he did in cross-examination, he having been married to the Applicant for so many years, and known

her for so long that he assumes (my emphasis) that she is a diabetic, he knows she requires medication on a monthly basis, but he does not know why.

Issue No. 2

45. The claim in respect of the four (4) properties at Llandilo. I accept the Applicant's evidence that the four (4) Lots were bought from the proceeds of the business or alternatively, from the defendant exceeding the overdraft maintained by the business at Scotia Bank. In cross-examination the Defendant said these properties were purchased, Lots 320, 303, 306 and 315 in 1995 for \$1.6 million each and were sold for at least \$2 million each in 2002. The Defendant claims to have made a loss, but he has provided no proof, he claims to have borrowed monies to purchase, but has provided no proof.

Issue No. 3

46. The lands at Farm Pen, or Lee Park, seven (7) Lots. In respect of these properties the Defendant is along with son Omar, named as the purchaser in the Agreement for Sale in respect of these properties. I accept Counsel for the Applicant's submission that these properties were acquired by the

Defendant using monies from the business which were held in trust for the Defendant and the Applicant or alternatively, from the Defendant exceeding the overdraft maintained by the business at Scotia Bank. Since the Defendant has unilaterally disposed of a half share to Omar, he holds the remaining half share on trust for the Applicant.

47. I therefore make the following orders:-

- (a) It is declared that the Applicant is entitled to a half share in the business concern known as "One Stop Liquor & Variety Store" and the Defendant is to provide a full accounting by 31st July 2004.
- (b) An account is to be taken and provided by the Defendant of all sums received by him for sale of the properties at Llandilo. It is declared that the Applicant is entitled to be paid one-half of the proceeds of sale of those properties. The Defendant is to provide said accounting by the 31st July 2004, failing which he is to pay to the Applicant half of the proceeds of sale which he

says he received in respect of each of the four (4) properties, that is half of \$2 million for each property, being \$4 million.

(c) In respect of the lands at Farm Pen or Lee Park, a valuation is to be done by a reputable valuator, to be agreed between the parties and failing agreement, to be appointed by the Court. The parties are to agree to a Valuator by June 30, 2004 and are to share the costs of the valuator. The Defendant is to pay to the Applicant half the value of the said lots as determined by the Valuator within 90 days of the receipt of the valuation.

(d) Liberty to apply

(e) Costs to the Applicant to be taxed if not agreed.