

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

HCV 01158/2003

BETWEEN KATHLEEN MAY LAMONT CLAIMANT
AND ALVIS LAMONT DEFENDANT

CONSOLIDATED WITH

SUIT NO. E. 702 OF 2002

BETWEEN ALVIS LAMONT APPLICANT
AND KATHLEEN MAY LAMONT RESPONDENT

Mr. Kevin Williams instructed by Grant Stewart Phillips and Co. for the Alvis Lamont.

Mr. Pierre Rogers and Mrs. Graham-Bright instructed by Gifford Thompson and Bright for Kathleen May Lamont.

Heard: 13 June, 14 September 2005 and 20 December 2005

MANGATAL J.

1. Alvis Lamont “the husband” and Kathleen May Lamont “the wife” were married in 1963. In 2002 the husband filed an application under the Married Women’s Property Act for division of property. At that time divorce proceedings were pending. The parties are now divorced. The wife filed proceedings in 2003 and both sets of proceedings are now consolidated.
2. The evidence was concluded on 14th September 2005 and I ordered the parties to submit written submissions in the latter part of September, which they have done.

3. This case is primarily concerned with the husband's claim in the 2002 Suit that he is solely entitled to property known as all that parcel of land part of No. 77 Molyne's Road, in the Parish of Saint Andrew, being the Lot numbered 17 on the Plan of No. 77 Molyne's Road and being the land contained in Certificate of Title registered at Volume 943 Folio 233 of the Register Book of Titles "the Molyne's Road property". The parties are registered as joint tenants on the title to the Molyne's Road property. The wife contests the claim and says that she is entitled to a 50 percent interest in this property.
4. In the 2003 Suit the wife had claimed an interest in a parcel of land at East Albion in Saint Thomas. However, in his written submissions on behalf of the wife, Counsel Mr. Pierre Rogers has conceded, rightly in my view, that the evidence falls short of what is required to prove the wife's claim in that regard. That claim will as a consequence be dismissed. This judgment concerns itself therefore with the contending claims to the Molyne's Road property.
5. Both parties filed Affidavits and were cross-examined extensively. This cross-examination proved useful as credibility is a major issue in this case.

The Husband's case

6. The husband states that the Molyne's Road property was acquired in about 1984 for a purchase price of one hundred and eight thousand Jamaican dollars. At no time did the wife contribute to the acquisition of this property, directly or indirectly, financially or otherwise. The entire deposit and all mortgage payments made through the Morant Bay branch of the Jamaica National Building Society "J.N.B.S." were paid by him alone until the mortgage was eventually discharged. At the time of the purchase of the Molyne's Road property the wife had seasonal

employment as a nurse's aid in the United States and the husband was a full-time plumber.

7. There was never any agreement that they would share the family's expenses, there was no understanding that he would be responsible for paying the mortgage and the wife would be responsible for the other expenses. He not only paid the mortgage, but also took care of all the household expenses and all the children's educational expenses.
8. The parties also owned a property at 1332 Scenectady Avenue, Brooklyn, New York "the New York property". This property was registered in the names of the husband and the wife as well as the husband's brother Newton Lamont.
9. The husband states that in 1993 he and the wife eventually separated but they continued to live in the same house in New York until 1995. In 1993 the husband and wife had a discussion in which the wife indicated that she would like to move to Miami and that the husband should buy her a house in Miami. The husband told her that since they have two properties, one in Jamaica and one in New York the wife should choose one. He then asked the wife whether she wanted the Molyne's Road property or the New York property and the wife indicated that she did not want to come back to Jamaica. The husband told the wife to take the New York property, sell it and use the proceeds to purchase the house in Miami. The husband agreed to remove his name from the property documents so that the wife could sell the New York property without his input.
10. Eventually the husband's name was removed from the title documents for the New York property and in so doing no money was paid to him by the wife for his share and interest in the New York property.
11. The transfer of the New York property to the wife's sole name was done on the understanding between them that the wife would have no claim, interest or share in the Molyne's Road property.

The Wife's case

12. The wife agrees that the Molynes Road property was acquired in or about 1984 for a purchase price of one hundred and eight thousand Jamaican dollars. However, the deposit was paid by both the husband and herself and she also gave the husband one hundred and fifty United States dollars monthly towards the monthly mortgage payments until the mortgage was paid in full.
13. The wife states that she was working at the time of the purchase. After she gave birth to the party's last child in or about 1978 she had full-time employment as a nursing assistant. At times she had two jobs, one "on the books", one "off the books". She at no time had seasonal employment as a nursing aid.
14. The arrangement or partnership between the wife and the husband whilst they lived together as man and wife was that she would run the house and the husband would pay the mortgage in respect of the New York property. The wife paid the bills relating to food, utilities, children's clothes, fares to and from school and school books.
15. The wife and the husband also worked together in the same way in or about 1987 when the husband went to school full-time to obtain his plumbing qualification and the wife worked to support the family.
16. As far as the wife knew, the marriage broke down in 1995 when the wife discovered that the husband wanted to leave her in the United States of America in debt and live in Jamaica with another woman.
17. In or about 1993 the husband was in severe financial difficulties and his business was doing badly. There was no agreement between the husband and the wife that the husband would transfer his interest in the New York property to the wife solely. The New York property was transferred temporarily as the husband's credit was bad and thus on the advice of a financial advisor the New York property was transferred from the husband to the wife. The removal of the husband's name was to facilitate

the wife obtaining a mortgage since the husband's credit was bad. The wife was not however successful in obtaining a mortgage because her salary could not meet the payments.

18. In or about 1993 the mortgage company that had the second mortgage over the New York property put the property into foreclosure. The wife was now making the mortgage repayments in respect of the first mortgage but she was unable to make the repayment on the second mortgage which the husband had also stopped paying. The wife states that the only thing she could do to save the house was to file Chapter 13 Bankruptcy proceedings. The New York property was fully mortgaged and there was no equity since the total amount owed on the mortgages was about one hundred and sixteen thousand five hundred United States dollars.
19. The wife denies that she asked the husband to buy her a house on the basis that she wanted to move to Miami. She also denies telling the husband that she did not want to go back to Jamaica; she says they were in any event in the process of setting up a poultry farm in Jamaica.
20. The wife categorically denies that there was any agreement between her and the husband that the husband would transfer the New York property into her sole name on the understanding that the wife would have no claim, interest or share in the Molyne's Road property.

What are the issues in this case?

21. The central issue is whether the husband and the wife agreed in or about 1993 that the husband would transfer his share in the New York property to the wife in exchange for the wife having no claim or interest in respect of the Molyne's Road property.
22. If there was no such agreement, what are the respective interests of the parties in the Molyne's Road property?

23. In my view, the account advanced by the wife is on a balance of probabilities more credible than that advanced by the husband. I also found the wife's demeanour more convincing and straight-forward than that of the husband during cross-examination. An important consideration was the question of the equity left in the New York property at the time of the husband's transfer of his interest to the wife. The husband at first suggested that there would be substantial equity left in the property even after liquidation of the outstanding mortgages, which equity he estimated at ninety thousand United States dollars. However, I found it instructive that the husband was initially quite vague as to what remained outstanding by way of mortgage. I agree with Mr. Rogers, Counsel for the wife, that by the end of the cross-examination the husband had admitted that when the outstanding mortgages and re-financing arrangements were taken into account the property was burdened with in excess of one hundred thousand United States dollars worth of outstanding loans at the time of the transfer from the husband. I reject the husband's evidence that his wife chose this heavily-burdened property and agreed to relinquish any interest that she may have had in the Molyne's Road property. It is the husband who bears the burden of establishing this express agreement or understanding between the parties and I am not satisfied, indeed I reject, his evidence that there was such an agreement.
24. In addition, I accept that the husband's interest was transferred to the wife in 1993. I also accept that the transfer from the husband's brother Newton Lamont to the wife took place on the 18th of June 1996. This is in accordance with the documents exhibited to the Affidavit of Documents referred to by both parties' Attorneys and which it was agreed also formed part of my bundle and the evidence in this case. If the removal of the husband's name was in reality for the purpose of the wife being able to deal with the property as hers alone one would have expected that the husband's brother's name would have been removed at or around the

same time as the husband's name. I accept the wife's evidence as to the dire financial straits into which the husband had placed himself. I accept that the New York property was put on foreclosure and that the wife felt that she was only able to save the property by filing for Chapter 13 Bankruptcy proceedings. Mr. Williams argued on behalf of the husband that none of the Indentures by which the New York property was transferred by or to the wife has any notation that the transfer was pursuant to Bankruptcy or foreclosure proceedings. Whilst the documents do not appear to bear any certification, I note that some of the relevant documents exhibited to the wife's Affidavit filed 1st December 2003, appear to emanate from the United States Bankruptcy Court for the Eastern district of New York, including a plan for liquidation of indebtedness.

25. Counsel Mr. Williams on behalf of the husband also submitted that the fact that the wife continued to transfer the New York property to and from herself without accounting to the husband for his alleged half share even after she became aware of the husband's claim to the entire Molyne's Road property, is evidence that the wife is to be taken as having acknowledged the agreement between the parties as alleged by the husband. Whilst I accept that Counsel's factual premise as to how the wife has conducted herself regarding the New York property is accurate, in my view the wife's behaviour is susceptible to a number of different explanations, and there is no clear marker pointing in particular to the inference which Counsel asks me to draw when one considers the matter on a balance of probabilities.
26. I also take into account the husband's concession during cross-examination that in an Affidavit sworn to by him on the 24th March 2005, he described the Molyne's Road property as "our house", i.e. that of the wife and himself. That Affidavit was filed in a law suit which the husband has filed against the wife in the Surrogates Court for the State

of New York to recover monies about to be paid out to the parties' deceased daughter's estate.

27. It is not my duty to speculate as to the reason for the several transfers of the New York property and the ultimate transfer to the husband and wife's daughter Herfaleen Lamont in 2003. Indeed, it is not my task to adjudicate on the respective interests of the parties in the New York property. My concern is to see whether I accept that the husband transferred his interest to the wife in consideration for her not having any claim to the Molyne Road property, and it is to that extent that the documents relating to the New York property are relevant. I accept that the husband's name was removed to try and deal with the debts on the property and because of his bad credit, and that his name was not removed as part of any agreement that the wife would forego an interest in the Molyne Road property. I accept the wife's evidence that the transfer to Mr. Brown and retransfer to her was done so that she could "regain her credits".
28. In **Bent v. Bent**, Civil Appeal No. 78 of 2002, the wife was successful in establishing an agreement to transfer any interest she had in a property in Canada in exchange for obtaining an interest in another property in Jamaica. At page 20 of the Court of Appeal judgment Cooke J.A. discusses the explanation given by the wife at trial as to why a transfer of the premises in Jamaica, which the trial judge declared she was solely entitled to, had not been transferred to her. In the instant case, whilst the husband acknowledged in cross-examination that he did not ask the wife to sign a transfer of the Molyne Road property to him at the same time and in the same fashion as he transferred the New York property to her, no explanation was proffered. Without more, if the agreement between the parties was that the husband would transfer his interest in the New York property to the wife and in exchange the wife would claim no interest in the Molyne Road property, then in the same way as the husband signed the transfer of the New York property to the wife, it

would seem logical that the wife would sign a transfer document transferring her interest in the Molynes Road property to the husband. Both parties are registered on the title to the Molynes Road property as joint tenants and were so registered in 1984.

29. I therefore reject the husband's claim at paragraph 17 of his Affidavit sworn to on the 15th of November 2002 that the transfer of the New York property was done on the understanding between the wife and husband that the wife would have no claim, interest or share in the Molynes Road property.

The Second Issue- What are the respective interest of the parties in the Molynes Road property?

30. As indicated by May L.J. in **Burns v. Burns** [1984] 1 All E.R. 244 at 258e, where the legal estate to the couple's home is taken in joint names then generally the beneficial interests will depend on the respective contributions of the parties to the acquisition of the property. The judge must look at the contributions of the parties broadly and look at each party's contribution to the family finances:

The fact that one party paid the mortgage may indicate that it was recognized by the couple that that party was solely responsible for providing the purchase price and therefore to be regarded as the sole beneficial owner. But often where a couple are living together and both are working and pooling their resources, which one of them pays the mortgage may be no more than a matter of internal accounting between them.

In such a case the judge must look at the contributions of each to the "family" finances and determine as best he may what contribution each was making towards the purchase of the house....The contributions must be viewed broadly by the judge to guide him to the parties' unexpressed and probably unconsidered intentions as to

the beneficial ownership of the house. There is of course an air of unreality about the whole exercise, but the judge must do his best and only as a last resort abandon the attempt in favour of applying the presumption of equality, which may so often give an unfair result.....

31. Although **Burns v. Burns** was a case involving an unmarried couple, the English Court of Appeal reiterated that the same principles apply to married and unmarried couples.
32. In her Affidavit filed 1st December 2003, paragraphs 4, 7 and 10, the wife states that she contributed both to the deposit on the Molyne Road property as well as the monthly mortgage. She states that she gave the husband one hundred United States dollars each month towards the mortgage. The husband would place that amount in their joint account at the Morant Bay branch of the J.N.B.S. She states that the account at the Morant Bay branch was originally an account in her sole name but due to the fact that they were obtaining a mortgage in the names of both the husband and the wife, the wife instructed J.N.B.S. to put the husband's name on the account.
33. In his cross-examination, although the husband persisted in saying that the wife did not contribute to the deposit or the mortgage, he agreed that the mortgage payments were made from the Morant Bay branch of the J.N.B.S. and that this account was originally in the wife's sole name. He agreed that she added his name so as to facilitate transfers to that branch in respect of the mortgage payments.
34. I found it interesting that during cross-examination the husband stated that he went to school in order to obtain training as a plumber between 1978-1979. He says that his wife may have worked one day during that year. He said that he doesn't know if the wife was working while he was in school, because she said she went to work but, "(he) don't see no work". He insisted that the wife did not support the household.

35. By far and away the wife's account is more credible than that of the husband. The wife is a nursing assistant and I believe her when she states that after the birth of the parties' last child she was in full time employment as a nursing assistant and at times had two jobs, one on the books and one off the books. She exhibited her Social Security Statement dated September 28 1999. This statement showed that between the years 1969- 1998 the wife had on the book earnings for the majority of years during that period, except for the years 1973, 1978, 1979, 1987. She was working before and after the purchase of the Molyne's Road property.
36. I therefore find that the wife did contribute to the acquisition of the Molyne's Road property, both by paying a portion of the deposit as well as contributing towards the monthly mortgage payments. I also find that there was a pooling of the family resources. Based upon the evidence before me, and seeking to find a fair solution on broad principles, I find that the husband and the wife are equally entitled to the Molyne's Road property, applying the presumption of equality.
37. However, even if I am wrong in finding that the wife did make a financial contribution towards the deposit or the mortgage payments, once the finding has been made that there was no agreement with regard to the transfer of the New York property as alleged by the husband, the presumption of a joint beneficial tenancy would operate in favour of the wife as a wife whose husband has solely contributed to the acquisition but who has put the property in their joint names. Indeed, during cross-examination the husband stated that he put the wife's name on the Molyne's Road title because the status of marriage signifies that the husband and wife are as one. He stated:

*According to me, I was giving her a share in the property,
because we were married.*

The linchpin of the husband's claim is therefore the alleged agreement, the existence of which agreement I have rejected.

38. As regards the relief claimed in the Originating Summons Suit No. E 702 of 2002, I make the following orders:
- (a) It is declared that the husband /Applicant Alvis Lamont and the wife/Respondent are each entitled to a fifty percent share in all that parcel of land part of number 77 Molyne Road in the Parish of Saint Andrew being the Lot numbered 17 on the Plan of No. 77 Molyne Road and being the land contained in Certificate of Title registered at Volume 943 Folio 233 of the Register Book of Titles.
 - (b) Liberty to Apply.
39. The Fixed Date Claim Form in Claim No. H.C.V. 01158 of 2003 is dismissed.