

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CHAMBERS

SUIT NO. E168/87

BETWEEN YVONNE PAMELA LAWRENCE PLAINTIFF
A N D GORDON HENRY LAWRENCE DEFENDANT

David Batts of Livingston, Alexander & Levy for plaintiff/
applicant.

Mrs. Pamela Benka Coker, instructed by Michael March of
Dunn, Cox & Orrett for defendant/respondent.

Heard: 30.10.87, 1.12.87, 22.2.88, 26.2.88

Harrison, J.

Originating Summons for declaration as to
ownership of property - Married Women's Property Act

This is an application by the plaintiff for a declara-
tion,

- (a) That the property known as Apartment C5 Carriage House, 65 Hope Road, Kingston 6 is owned by the applicant absolutely free of mortgage payments and incumbrances, or such order as to the ownership thereof, and or for the sale thereof as may be just,
- (b) that the items listed in Schedule A hereto are the property of the applicant or such order as to property as may be just,
- (c) that the items listed in Schedule B hereto are the joint property of the plaintiff and the defendant
- (d) that the defendant should pay the cost of these proceedings.

The unchallenged facts are these.

1. The plaintiff and defendant were married on 11th October, 1975.
2. They subsequently lived at premises 56 Begonia Drive which was bought in the name of the defendant.

These premises were sold and the proceeds of sale used to purchase the said Apartment C5 Carriage House.

3. On the 26th April, 1982 the agreement for sale to purchase Apartment C5 Carriage House was signed by both the plaintiff and defendant.
4. Plaintiff and defendant had separated in March 1982 when defendant moved out of the matrimonial home at 56 Begonia Drive; since then the parties have never lived together as man and wife.
5. The said apartment was transferred into the names of the plaintiff and defendant as joint tenants on 17th August, 1982.
6. The plaintiff and the children of the marriage moved into the said apartment on 20th August, 1982 and have lived there since.
7. ^{The respondent has never lived at the said apartment.} The plaintiff paid the maintenance charges of approximately \$400 per month for the said apartment, albeit she alleges that she had agreed reluctantly, from August 1982 until January 1985, on which latter date she ceased to. The reason as stated by the plaintiff was her "inability to afford same".
8. In April, 1986 the defendant was sued for arrears of maintenance charges for the said apartment, amounting to \$4,283 due to December, 1985.

The defendant paid the said arrears of maintenance which amounted to \$7,176.00 due to 1st June, 1986 and has continued to pay the said charges since

9. The defendant has paid the monthly mortgage payment on the said apartment since its purchase.

Mr. Batts for the wife/applicant argued that, each party is entitled as joint owner to a 50% share of the apartment C5, but in addition, the husband/respondent holds his half share in trust for her absolutely. He based his argument

on the fact that in August 1982 at the time the said apartment was purchased the husband told his wife that the apartment was hers and that she could do with it what she wished.

He argued further that these words operated to create a constructive trust, and that once the court finds that it was the common intention to create the trust that suffices and the applicant need not show that she had made any contribution.

He submitted that, alternatively the applicant should succeed, on the basis of the principle of proprietary estoppel, in that the actions of the parties showed a common intention to benefit the applicant and all the applicant needed to show was that she acted to her detriment on reliance on the promise. As a consequence she seeks the aid of equity to prevent the plaintiff from resiling from his promise. He emphasized that neither in this case need the promisee show that there was any contribution but merely that she acted to her detriment. He demonstrated that the applicant Mrs. Lawrence acted to her detriment in that she elected to remain in the apartment C instead of seeking to purchase a place of her own, because she relied on the promise of her husband in addition she expended \$7,856.66 on the said apartment believing it was hers absolutely.

Mrs. Benka-Coker for the respondent/husband submitted that even if Mr. Lawrence made the oral expression alleged, which he did not, that would have been insufficient to constitute a constructive trust, because Mrs. Lawrence had made no contribution to the $\frac{1}{2}$ share of Mr. Lawrence and was, as a consequence, a volunteer who would not be permitted in equity to enforce such a promise. It was argued further that it was an incompletely constituted

trust - not being in writing as required by the Statute of Frauds.

Mrs. Benka-Coker submitted that even if the alleged promise raised the principle of promissory estoppel that did not give rise to a claim on the part of the wife/applicant, because that principle may only be used as a defence.

Mrs. Benka-Coker conceded that the principle of proprietary estoppel could be used as a base to a claim to the said one half share held by the husband/respondent - but that the wife/applicant seeking to enforce it must show that she had given consideration, that is, financial resource; that Mrs. Lawrence had made no contribution and so has failed to show that she was entitled to the $\frac{1}{2}$ share of Mr. Lawrence in the said apartment and consequently owned the apartment absolutely, as she claims.

Both counsel cited authorities in support of their arguments.

The relevant law, is that contained in the case of Gissing v. Gissing [1970] 2 All E.R. 780. At p.789 Lord Diplock said,

"Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in land not vested must be based on the proposition that the person in whom the legal estate is vested holds it as trustee on trust to give effect to the beneficial interest of the claimant as cestui que trust ..."

Lord Diplock continued, at p.790,

".....if the agreement did not provide for anything to be done by the spouse, in whom the legal estate in the matrimonial home was not to be vested, it would be a merely voluntary declaration of trust and unenforceable for want of writing. But in the express oral agreements contemplated by these dicta it has been assumed sub silentio that they provide for the spouse in whom the legal estate ... is not vested to do something to facilitate its

aquisition, by contributing to the purchase price or ... to make some other material sacrifice by way of contribution...

..... What the court gives effect to is the trust resulting or implied from the common intention expressed in the oral agreement between the spouses that if each acts in the manner provided for in the agreement the beneficial interests in the matrimonial home shall be held as they have agreed

As in so many branches of English Law in which legal rights and obligations depend on the intention of the parties to a transaction, the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party. On the other hand, he is not bound by any inference which the other party draws as to his intention, unless that inference is one which can reasonably be drawn from his words or conduct".

In the case of *Grant v Edwards* [1986] 2 All E.R. 426 Sir Nicholas Brown-Wilkinson, V.C., confirming the principle laid down in *Gissing v Gissing* relating to the constructive trust, referred specifically to acts to one's detriment. He said, at p.437,

"If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial interest. This requires two matters to be demonstrated (a) that there was a common intention that both should have a beneficial interest and (b) that the claimant acted to his or her detriment on the basis of that common intention" (emphasis mine).

There is little guidance in the authorities on constructive trusts as to what is necessary to prove that the claimant so acted to her detriment... In my judgment where

the claimant has made payments which, whether directly or indirectly, have been used to discharge the mortgage installments, this is a sufficient link between the detriment suffered by the claimant and the common intention."

In Re Basham (deceased) [1987] 1 All ER 405, Edward Negee, Q.C. sitting as a deputy Judge of the High Court, regarded proprietary estoppel as a form of constructive trust. He stated, at p.410,

" "... a third situation in which the court imposes a constructive trust is where A and B set up house together in a property which is in the name of B alone and A establishes a common intention between A and B, acted on by A to his (or more usually her) detriment, that it should have a beneficial interest in the property."

Equally, Sir Nicholas Brown Wilkinson, in Grant v. Edwards supra, equated the constructive trust to proprietary estoppel. He stated, at p.793,

"Useful guidance may in future be obtained from the principles underlying the law of proprietary estoppel which in my judgment are closely a kin to the principles underlying Gissing v. Gissing. In both, the claimant must to the knowledge of the legal owner have acted in the belief that the claimant has or will obtain an interest in the property.

In both, the claimant must have acted to his or her detriment in reliance on such belief.

In both, equity acts on the conscience of the legal owner to prevent him from acting in an unconscionable manner by defeating the common intention The two principles rest on the same foundation".

In the instant case the wife/applicant - Mrs. Lawrence claims the beneficial interest in the apartment C5 Carriage House - in that she is entitled to 50% interest and that the husband/respondent Mr. Lawrence holds his 50% interest in trust for her beneficially.

On the facts she is clearly entitled to a 50% interest, the registered title being in their joint names.

Mrs. Lawrence fixes her claim to Mr. Lawrence's 50% interest on the ground that there was a common intention as expressed by Mr. Lawrence and acquiesced in by her by his use of the words, "the apartment is yours you can do with it as you wish". That relying on that promise she acted to her detriment by remaining in the said apartment instead of seeking to purchase a house of her own and also by expending money on the said apartment for repairs.

Assuming that Mr. Lawrence did use these words as alleged, in August 1982, what has been the conduct of the parties thereafter to demonstrate that "common intention"?

- (i) Mrs. Lawrence ceased paying maintenance charges in January, 1985, after having done so from August 1982 - risking accumulated charges to her disadvantage and so jeopardizing the interest she claims was hers absolutely.
- (ii) Mr. Lawrence paid the maintenance charges after January 1985 and mortgage payments from August 1985. It is unlikely that he would have done so in respect of an apartment that Mrs. Lawrence claims was absolutely hers and which he regarded as hers.
- (iii) Mrs. Lawrence in her affidavit dated 27th May, 1987 stated, "18. In 1985 the Defendant suggested that Apartment C5 Carriage House, be sold and the proceeds put on fixed deposit and that the interest earned be used to build a house for the children and myself. 19. The defendant promised that until sufficient interest was earned to do this he would pay the

rental for such accomodation as myself and the children would need. 20. I agreed to the proposal outlined in paragraphs 18 and 19 above."

Mr. Lawrence in XXN admitted that he made such a proposal.

This Court hold that such a proposal by Mr. Lawrence displays an intention that he regarded the Apartment C5 as not the absolute property of Mrs. Lawrence - but as property in which he still had an interest to deal with it, and over which he still had some degree of control.

Mrs. Lawrence's recital that she agreed with the proposal shows that up to 1985 she never regarded the property as held in trust for her absolutely - but acquiesced in Mr. Lawrence's directives as to the ultimate disposition of the proceeds of a prospective sale. It is unlikely that she would have agreed to such "external control" if she regarded the property as absolutely hers.

The acts on which Mrs. Lawrence relies to ground her contention that she acted to her detriment, i.e. remaining in the apartment and expending moneys for repairs, are acts consistent with one who is a co-owner of the apartment and cannot be referable to the "insufficient link between the detriment suffered by the claimant and the common intention", highlighted by Sir Nicholas Brown-Wilkinson, V.C. in *Grant v. Edwards*, supra. These acts may be at the highest, ambiguous - but are consistent with that of a co-owner of the apartment and not wholly attributed to conduct consistent with reliance on the promise of Mr. Lawrence as alleged.

This Court does not therefore find, from the conduct of the parties that there was any common intention that Mr. Lawrence held his half share in trust for Mrs. Lawrence nor that there are any acts by Mrs. Lawrence

to show that she acted to her detriment to give rise to the concept of the constructive trust.

The parties separated in March 1982 and the said apartment C5 was transferred into their joint names on 17th August, 1982. Mr. Lawrence never lived with Mrs. Lawrence since March 1982. It would seem that if it was his intention to allow Mrs. Lawrence to own the said property absolutely it is unlikely that he would have on 17th August, 1982 transferred the property into their joint names instead of Mrs. Lawrence's name only.

The Court finds that Mr. Lawrence did not utter the words alleged.

The Court is confirmed in this view not only by the conduct of the parties referred to above, but in addition by Mrs. Lawrence's recital that Mr. Lawrence agreed to pay all maintenance fees and mortgage charges. These would be acts consistent with continued ownership in Mr. Lawrence and not consistent with a detriment on the part of Mrs. Lawrence to supply that "sufficient link". Neither would these acts provide support for the trust contended for.

In all the circumstances this Court holds that the parties hold the said property as to its beneficial interest equally, i.e. 50% each.

It is hereby declared that,

- (1) the property known as Apartment C5 Carriage House, 65 Hope Road, Kingston 6 is owned by the parties equally as to its beneficial interest and it is ordered that the said property be sold and the net proceeds of sale be divided equally between the parties after all consequential accounts have been taken by the

Registrar and all costs are deducted from the gross proceeds of sale.

Such account is to be approved by a Judge in Chambers.

The said property is to be at first valued by a recognized valuator agreed on by the parties.

(2) items (a) (b) (c) and (e) of Schedule A are the property of the applicant.

(3) The items in Schedule B are the property of the applicant.

There shall be no order as to costs.