

Poling Cabinet

**SUPREME COURT LIBRARY
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JAMAICA**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN DIVORCE

SUIT NO. D. L-012 OF 1990

IN THE MATTER of premises known as Oxford Manor Apartments, Apartment No. 102A situated at No. 16 Oxford Road registered at Volume 1178 Folio 211

A N D

IN THE MATTER of premises known as Oxford Manor Apartments, Apartment No. 510A situated at 16 Oxford Road registered at Volume 1179 Folio 226

A N D

IN THE MATTER of a shop situated at Southdale Plaza known as Shop No. 9

A N D

IN THE MATTER of shares in Ankal Limited a company duly incorporated under the Laws of Jamaica

A N D

IN THE MATTER of premises known as 4 Weycliffe Close, Kingston 6 Saint Andrew

A N D

IN THE MATTER of the Married Women's Property Act.

BETWEEN	CAROL	ELEASE	LEVY	APPLICANT
A N D	ANDRE	KARL	LEVY	DEFENDANT

Mr. Gordon Steer instructed by Chambers, Bunny and Steer for Applicant.

Mrs. Margaret Forte instructed by Gaynair and Fraser for Defendnat.

HEARD: 13th, 14th, 23rd, 29th July, 1992 -
22nd, 23rd 26th February, 1993 and
8th July, 1994

ELLIS J.

By Originating Summons dated the 20th February, 1990, the applicant Carol Elease Levy of Apartment No. 102A, 16 Oxford Road claims to be the sole beneficial owner in respect of the said apartment No. 102A, premises 4 Weycliffe Close, Kingston 6, Apartment no. 510A at 16 Oxford Road, Shop No. 9 at Southdale Plaza and shares in a Company called Ankal Limited. She also seeks orders from the Court in relation to the claims as follows:-

- (a) What is the respective interest of the Applicant and the Defendant in premises known as Oxford Manor Apartments, Apartment No. 102A situated at Number 16 Oxford Road in the parish of Saint Andrew.
- (b) What is the respective interests of the Applicant and the Defendant in premises known as Oxford Manor Apartments, Apartment No. 510A situated at Number 16 Oxford Road in the parish of Saint Andrew.

- (c) What is the respective interest of the Applicant and the Defendant in shop situated at Southdale Plaza known as Shop Number 9.
- (d) What is the respective shares of the Applicant and Defendant in the abovenamed Company.
- (e) What is the respective interest of the Applicant and the Defendant in premises known as 4 Weycliffe Close, Kingston 6 in the parish of Saint Andrew.
- (f) That the Defendant should take no steps by sale assignment of any right title or interest which he now purports to have in the said properties or do any act whatsoever to create any right title or interest therein.
- (g) That a report on and valuation of the several premises be taken or alternatively that a valuation agreed upon by the Applicant and the Defendant be taken.
- (h) AND GENERALLY for a still further Order that the Applicant be restrained from acting with regard to all the properties mentioned above.
- (i) Such further and other relief as this Honourable Court may deem just.
- (j) Such costs as are incidental to the proceedings.

The applicant's application was supported by affidavits and she was cross examined by the Defendant's attorney.

The parties were married on the 27th day of August, 1977 and the marriage was dissolved on the 12th December, 1990. During the subsistence of the marriage the parties resided at several places including 4 Weycliffe Close, Kingston 6 which is one of the properties under consideration. Since 4 Weycliffe Close was the first matrimonial home I will consider the claim with regards to that property first.

4 Weycliffe Close

The applicant in her affidavit contends that she contributed \$10,000.00 towards the purchase price of that property. That amount she said she withdrew from her savings account at the National Commercial Bank at Ocho Rios and gave to the vendor a Mr. Frederick Grant. She supported that contention by exhibiting a receipt purported from Frederick Grant marked "C.L. 2." In addition to the \$10,000 she contends that she contributed \$50,000 which was obtained from her brother in an amount of U.S.\$10,000.00.

The Defendant in his affidavit denies any such contribution and says he paid the deposit of \$26,000 and made all mortgage payments on the property from his own resources. He says the \$10,000 which the applicant withdrew from the Bank at Ocho Rios was rental which she had collected for his father from 8 Aldington Avenue. He also denies that he received any sum of U.S.\$10,000 or its equivalent Jamaican

Currency from the applicant.

The applicant was cross examined on her affidavit. In answer to Mrs. Forte she said she from borrowed funds contributed a total of \$70,000.00 towards the purchase of 4 Weycliffe Close. However when questioned as to the details and repayment of those loans and contribution she was not a convincing witness. Also the signature on the receipt "C.L.2" to put it mildly is of dubious authenticity.

The Apartments

With regards to the Apartments, the applicant in her affidavit of 16th January, 1990 at paragraph 21 avers simply that on their purchase she insisted that they be purchased in their joint names. She did not then speak of contributing to their acquisition in any way.

On being cross examined she contended for contribution from joint ventures but was uncertain as to the quantum of the contribution as the respondent handled all the money from the joint ventures which were the selling of motor cars. She was not able to evidence with any certitude any detail of the joint ventures either as to the number of cars sold or the amount of money or profit made. She admitted that the respondent was in full control of the selling of second hand cars.

The applicant admitted that the respondent was in receipt of a travel allowance and held Insurance Policies when the apartments were purchased. She agreed that part of the purchase price for the apartments could have been from the respondent's travel allowances and loans on his Insurance Policies.

The applicant was shown Exhibit 1-111 which all indicated the respondent's sole involvement in the purchase of the apartments. In the light of the exhibits, it was put to her that she put nothing towards purchasing the apartments and her reply was that she could not remember if she put in cash but she worked towards the purchase of the apartments.

She also sought to support her contention for contribution by saying that there was also a joint venture involving the purchase and sale of lobsters and denied that the venture was a financial failure.

Shop No. 9 at Southdale Plaza

At paragraph 25 of her affidavit dated January 16, 1990, the applicant depones that the shop at No. 9 Southdale Plaza was purchased by Ankal Limited. At paragraph 23 of that affidavit she depones that Ankal Limited was owned by herself and the respondent in the ratio of 51% to the respondent and 49% to herself. As a consequence

of that ownership she contends for a 49% share in Ankal Limited and its assets including 9 Southdale Plaza.

The respondent in his affidavit dated 15th March, 1991, at paragraphs 14-16 admits the formation of Ankal Limited with 501 shares to him and 499 to the applicant. He however says that the applicant has never paid for her share allotment and therefore he had to pay all the costs of Ankal Limited and he has never been repaid those costs. At paragraphs 29-32 he says the applicant as an employee of Ankal Limited was paid salary for her services.

The shop at 9 Southdale Plaza was paid for by an initial deposit made by him and by a mortgage from the National Commercial Bank Trust Company to Ankal Limited. He repaid the mortgage and treated such repayments of the mortgage as loans to Ankal Limited, that company has never repaid him.

In those circumstances, he says the applicant is not entitled to any share in Ankal Limited or its assets as she contributed nothing to their acquisition.

The property at 4 Weycliffe Close served as the matrimonial home. The evidence show that the Husband/Respondent was the sole owner at law. The Wife/Applicant says that even so, she is beneficially entitled to an interest in that property. She bases her claim on direct and indirect contributions to the purchase of the property. Her direct contribution total \$70,000.00 she says and the indirect contribution was what she put in the house from her own earnings.

I do not find on the evidence that the applicant made any contribution to the purchase of 4 Weycliffe Close.

In the circumstances, I am constrained to hold that the applicant is not beneficially entitled to any share in 4 Weycliffe Close.

The apartments are in the name of the applicant and the respondent. Does that go to support the applicant's claim to be beneficially entitled to a share in the apartments?

In the case of *Pettitt v. Pettitt* [1969] 2 All E.R. P.385 at Page 415 letter C Lord Diplock dealt with such a fact thus:- "The old presumption of advancement and resulting trust are inappropriate to these kinds of transactions and the fact that the legal estate is conveyed to the wife or to the husband or to both jointly though it may be significant in indicating their actual common intention is not necessarily decisive since it is often influenced by the requirements of the building society which provides the mortgage."

Bearing in mind that the applicant was not in any way certain as to the quantum of her contribution to the acquisition of the apartments, her entitlement

if any can only be based on her assertion at paragraph 21 of her affidavit dated 16th January, 1990 that "she insisted that they be purchased in their joint names

The husband/respondent at paragraph 18A of his affidavit of 27th January, 1990 states that the applicant's name was only placed on the titles to the apartments in order to facilitate his obtaining loans to acquire the properties outside the Bank to which he was employed.

I accept the respondent's statement and the matter is therefore within the dictum of Lord Diplock which has been cited above.

The fact that the applicant's name is on the titles to the apartments is not decisive of her entitlement to any share in them. Although Lord Diplock's dictum was in relation to a matrimonial home, I hold that it is applicable to the acquisition of the apartments in this case.

I can find no other basis to justify the applicant's claim and I therefore find that she is not entitled as claimed.

The applicant claims 49% in Ankal Limited and consequently 49% of its assets. She bases her claim on a statement at paragraph 27 of her affidavit of 16th January, 1990 that "I owned 49% of Ankal Limited."

She has not authenticated her claim in any other way either by affidavit or by answers in cross examination.

On the other hand, the respondent in his affidavit admitted an intention to allot 5% of the shares to the applicant and exhibited a letter "AKL 13" to that effect.

At paragraph 23 of his affidavit dated 27th January, 1992 he says that subsequent to the letter "AKL 13" the applicant agreed to use the proceeds of the sale of a property to purchase 49% of Ankal Limited. He therefore revised the instruction in "AKL 13" so that the applicant would now hold 49% of the shares and he 51%.

The applicant however, has not up to date of hearing paid for the shares. In that premise, the respondent contends that the applicant is not entitled to 49% of Ankal Limited and its assets.

The question which comes to mind therefore is this. Does the non-payment for the shares erase the agreement and intention to allot 49% of Ankal Limited to the applicant? I do not so hold since the respondent in order to correct an error in allotment sought and obtained a release of nine shares to him as evidenced by "AKL 16."

That to my mind re-enforces the intention to allot 49% of Ankal Limited to the applicant. I hold therefore that the applicant is entitled to a 49% share in Ankal Limited and its assets including shop at 9 Southdale Plaza.

In relation to the Originating Summons I make the following declarations.

- (a) The Respondent is the sole beneficial owner of apartment 102A at 16 Oxford Road.
- (b) The Respondent is sole beneficial owner of apartment 510A at 16 Oxford Road.
- (c) The applicant is beneficially entitled to a 49% share in the shop at 9 Southdale Plaza.
- (d) The applicant is entitled to a 49% share of the company Ankal Limited.
- (e) The Respondent is sole beneficial owner of 4 Weycliffe Close, Kingston 6.

In order to give effect to the declarations at (a), (c) and (d) above, it is ordered that an accounting of the rental if any from apartment 102A be made and that an accounting of Ankal Limited and its assets be made and it is further ordered that the shares in Ankal Limited be evaluated and apportioned in the ratio of 51%-49%. The price of the shares allotted to the Claimant is to be deducted from her share in Ankal Limited.