

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 171/89

BETWEEN

DELINA LOWE

APPLICANT

AND

KPHRAIM LOWE

RESPONDENT

Mr. Ian Wilkinson instructed by Messers
Alton Morgan & Company for Applicant

Mr. D. Darby for Respondent

Heard: 20th April, 1993

HARRIS J. (Ag.)

By an originating summons issued on the 29th May, 1989, the applicant sought a declaration as to the respective interests of the respondent and herself in property known as 125 Kirby Way, Portsmouth, Waterford in the parish of Saint Catherine. This application was supported by an affidavit filed on the 28th February, 1992, to which the respondent filed an affidavit in reply. The applicant subsequently filed an affidavit in response to that of the respondent.

The applicant averred that she was married to the respondent on the 22nd December, 1984. At the time of the marriage he was the registered proprietor of premises known as 125 Kirby Way, Portsmouth, Waterford in the parish of Saint Catherine which had been transferred to him on the 4th August, 1982.

She had known the respondent for a period of two years before the marriage and in June 1984 they planned to be married. In contemplation of marriage, the respondent told her that his house could be their matrimonial home, but it needed repairs and a kitchen. He requested her to give him money to assist with the purchasing of materials to effect the repairs. He promised to place her name on the certificate of title, which promise he never honoured.

In pursuance of the promise made by the respondent and the impending marriage, she advanced about \$20,000.00 towards repairs and improvement to the property. The

contributions she made, took the form of regular withdrawals from her savings account with Victoria Mutual Building Society, amounting to \$15,000.00. (The savings account passbook was exhibited). She also provided the respondent with several "partner draws" amounting to \$1,500.00 each. She handed over the funds to the respondent directly, and also paid the contractor at times.

The house originally consisted of two bedrooms a living room and a small kitchen. The following improvements were effected:

- (a) the master bedroom was extended, a verandah, car port and kitchen were built;
- (b) aluminium louvres were replaced by redwood and glass louvres and gates were installed at front and rear of premises.

The respondent deposed that the parties met in February 1984 and in July of that year, agreed to be married. At the time he met the applicant, he was living at the premises and had been in possession of it since 1979 but it was not transferred to him until 4th August, 1982.

In February 1982 he commenced work to improve and extend the premises and employed a Mr. Stanford Higgins to do so. Between February 1982 and December 1983 he extended the front verandah, and kitchen and built an additional bedroom. This he did by utilising funds from his savings account with Jamaica Citizens Bank and a loan from National Water Commission where he worked. He deposed that in July of 1984 he discussed marriage with the applicant, but told her that he had spent a substantial sum of money on the improvement of his house and was unable to afford to be married at that time. The applicant then informed him that she had a savings account with Victoria Mutual Building Society and was prepared to defray the wedding expenses. He was aware that she withdrew certain sums of money between September and November, 1984 to cover a part of the expenditure for the wedding.

He further stated that the sums withdrawn from the applicant's account was never given to him, nor used for costs of improvement of the property, as, he maintained and improved the property at his sole expense, nor, did she at any time, pay the contractor. He also declared that he had never told her that if she gave him financial assistance to carry out the repairs he would have had her name placed on the Certificate of Title.

At the time the applicant moved into the premises, in December 1984, after their marriage, all extensions and repairs had already been completed. He however borrowed \$1,000.00 from her in 1986 to assist with grilling of the verandah and in 1989 - 1990 he extended the front bedroom at his expense.

The applicant has attempted to obtain relief under the Married Women's Property Act s. 16 which provides:-

"In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society, as aforesaid in whose books any stocks, funds or shares of either party are standing may apply by summons or otherwise in a summary way to a Judge of the Supreme Court or (at the option of the applicant irrespectively of the value of the property in dispute) to the Resident Magistrate of the parish in which either party resides; and the Judge of the Supreme Court or the Resident Magistrate, as the case may be, may make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit:"

To rely on this provision, the applicant must prove, among other things, that the improvements to the house had been done between June 1984 and December 1985 when the parties formed the intention to be married and was married. In order to do so, she must adduce cogent evidence to influence this tribunal that on the balance of probabilities the improvements were made during the period she had alleged.

There is uncontroverted evidence that the property was purchased by the husband in 1982, that he made all mortgage payments and that certain improvements were carried out. There is also no dispute that the parties agreed in mid 1984 to get married and were in fact married in December of that year. However, there are conflicts in the evidence as to the time the improvements to the property were done and whether a promise had been made by the respondent to place the applicant's name on the title. There is also a dispute as to the time the parties met each other and as to whether the applicant had advanced funds at the request of the respondent to make improvements on the house.

Although the evidence raises these controversial issues the most crucial of these,

is whether the applicant has proven that the repairs were done during the period she has stated that they were carried out. If there is evidence to indicate that the repairs were done prior to June 1984, then the application must of necessity fail, as she could not rely on the Married Women's Property Act, since at that time, the parties were never married, or contemplated marriage. If sufficient evidence is elicited by her to show that the repairs were done subsequent to June 1984 and completed in or about December 1985 then she ought to succeed.

The applicant's evidence indicated that the parties met sometime in 1982 and in June 1984 planned to be married. The respondent told her that his house could be their matrimonial home but was in need of repairs and requested money from her, which she gave to him to assist with repairs and he promised he would have placed her name on the document of title. She also asserted that the improvements and repairs were made between June 1984 and December 1985.

The respondent admitted that in mid 1984 he promised to marry the applicant and they did get married in December of the same year. He, however, denied all other averments made by her. The most significant of these denials, in his evidence in rebuttal, is that the repairs were done between February 1982 and December 1983, which would be outside the period which would bring her claim within the ambit of the provisions of the married Women's Property Act. It was imperative therefore, that she obtained and proffered, sufficient evidence to satisfy me that the repairs were done during the period she had specified.

In a statement contained in paragraph 11 of her affidavit in reply to that of the respondent, she merely denied his statement and reiterated that the improvements were done between June 1984 and December 1985. This I would state, is insufficient to rebut that aspect of the respondent's evidence. It behoves the applicant to go further and evoke additional evidence to substantiate her claim that the repairs were in fact made between June 1984 and December 1985. Although she exhibited her Victoria Mutual Savings Account passbook showing that certain sums were withdrawn over the period, this does not convincingly show that the renovations had taken place during that time, or that the funds were used for that purpose.

She stated that she had, at times, assumed the responsibility of paying the contractor. It is reasonable to infer that she would have obtained receipts from

him, not only evidencing her payments, but also disclosing the dates on which the payments were made. She produced no receipts.

Regrettably, the applicant has not advanced adequate evidence to satisfy me, on the preponderance of probabilities that the improvements had taken place over the period June 1984 to December 1985. I must therefore reject her evidence and accept that of the respondent.

It follows that since she had not established that the renovations were made after June 1984 she is not entitled to relief sought and has acquired no beneficial interest in the property.

It is ordered that the summons be dismissed with no order as to costs.