

*Judgement Book.*

In the Supreme Court of Judicature of Jamaica  
In Equity  
Suit E 342 of 1998

Between Valarie St. Elaine Prestwidge Applicant

And Warren Izette Prestwidge Respondent

Andrew Earle & Miss M. Wong instructed by Rattray, Patterson and Rattray for applicant

Garth McBean instructed by Dunn, Cox, Orrett and Ashenhiem for respondent.

Heard: 25th February, March 3, 5 & May 3rd, 1999.

Harris, J.

By an originating summons issued by the applicant on June 14, 1998, under the Married Women's Property Act, the following declarations were sought:-

- (a) That the applicant is entitled to a one half interest in Real Property registered in the joint names of the applicant and respondent namely: 81 Dumbarton Avenue, Kingston 10 in the parish of St. Andrew registered at Volume 1266 Folio 347 of the Register book of Titles;
- (b) That the applicant is the owner of a fifty percent interest in the partnership known as V.W. Cleanaway.

Certain consequential orders were also sought.

The parties are husband and wife having been married in 1969 but have since been separated.

In 1969 a partnership known as V.W. Cleanaway, was formed by the parties. The enterprise was one which provided janitorial services for homes and offices. A loan of approximately £ 700 was secured by them to finance the business. This loan was repaid from the business.

The applicant was fully employed in the operation of the business between 1969 and 1982, and part-time between 1982 and 1986. The respondent worked part-time in the business during the years 1979 to 1981 as he was then, for the most part, out of Jamaica, **working in Canada.**

While the respondent was abroad in 1981, the applicant found the property 81 Dumbarton Avenue, registered at Volume 1266 Folio 947. This property was purchased in 1982 for the sum of \$60,000.00 and was registered in the names of the parties as joint tenants. The full purchase money was obtained by way of a mortgage from the St. Mary Benefit Building Society in 1982. The mortgage was discharged in 1991. Substantial improvements have been carried out on the property since its acquisition.

It is the applicant's averment that she is entitled to a 50% share of the business V.W. Cleanaway and that she also holds an interest in 81 Dumbarton Avenue. in equal share with the respondent. The respondent contends that his contribution to the business far exceeds that of the applicant and he is therefore entitled to a larger share. He also states that it was agreed between himself and the applicant that his name only should be placed on the title, but the applicant, without his knowledge or consent caused her name to be endorsed on the title also.

I will first allude to the applicant's claim in respect of V.W. Cleanaway. She averred that this business was commenced by way of a partnership between the respondent and herself. This the respondent has admitted. The applicant further declared that she is entitled to one half interest in the business.

The partnership between the applicant and the respondent is a partnership at will and therefore not a partnership within the context of the Partnership (Ltd.) Act. Consequently, cognizance must be taken of the common law as it relates to partnership in determining the rights of the parties in V.W. Cleanaway. A partnership is the relation existing between two or more persons conducting business in common with a view of profit.

All parties in a partnership are presumed to be equally entitled to share in the capital and profits of the business. In *Farrar v Beswick* 1836, Mood and R527 N.P it was held that where two persons are in partnership, the presumption is that they are interested in the partnership stock in equal moieties. As a rule, each partner contributes either skill, property or labour. This, however, is not essential. The rule of equity prevails even in circumstances where one partner contributes

nothing, or, where his or her contribution of property, skill or labour exceeds that of the other, save and except, where there is previous arrangement between the two parties to the contrary.

The presumption of equal entitlement by partners to share in a business is subject to any express or implicit arrangement between them and as a consequence, rebuttable. Any party who raises an allegation that a partner ought not to enjoy equal entitlement in the partnership must so prove. *Johnson v Anderson* 1855 no. Beav. 98 establishes that the onus of proof is placed on the partner who alleges inequality.

Has the respondent shown that the applicant is not entitled an equal benefit in the business? It is clear that the applicant and respondent had carried on the business of V.W. Cleanaway in common with the objective of making profit. The applicant worked full time in the business from its inception until 1982. During this period, she was actively engaged in the business. She shared equally with the respondent in its management. There were times when she had even personally performed janitorial duties. She assisted with the supervision of the employees, and participated in the responsibilities of the business, including the obtaining of new contracts. Further, the initial loan which was obtained to the finance business, was made to both parties. The applicant also operated the business alone during the period of the respondent's absence from the island.

It is clear from the evidence that the parties, at the commencement of the partnership, envisaged an equal sharing of capital and profits of the business between them. No evidence has been adduced by the respondent to demonstrate that there was any express agreement that the applicant should not obtain an equal share in the business; nor is there any evidence from which, by implication it could be concluded that they were not equal partners. The respondent's statement that the applicant had not worked in the business since 1986 is insufficient to support his allegation that her interest in the business is less than one half. His assertion that he had been supplying her with money on a monthly basis since 1996 does not imply that she had been in receipt of profits from the business. There is evidence from applicant which I accept, that the money given to her by the respondent relates to maintenance for herself as well as her children whenever the children, who are resident abroad, are on a visit to Jamaica.

The evidence irrefutably establishes the existence of an agreement between the parties demonstrating that at the commencement of the partnership,