

Sc 5B

SUPREME COURT LIBRARY
KINGSTON
JAMAICA

Judgement Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

SUIT NO. CL. 2004/HCV-00553

BETWEEN	CLAUDETTE ANN-MARIE RAMDEEN	CLAIMANT
AND	LLOYD AUGUSTUS RAMDEEN	DEFENDANT

Andre Earle and Malcolm Arthurs instructed by Rattray, Patterson & Rattray for claimant
Garth McBean instructed by Garth McBean & Co. for defendant.

Heard: June 29 & 30, and November 16, 2005

JONES, J:

[1] A happy marriage needs a bit of give and take. So it was, once, between Lloyd and Claudette Ramdeen. It seems that the increasing fragility of their marriage has jarred this harmony. Prior to their marriage, Lloyd Ramdeen bought property in their joint names, which strictly speaking he was not required to do; he also bought property in his own name. Claudette Ramdeen says that she contributed to some of the property purchased prior to the marriage. She also says that although she did not make a financial contribution to other items of property, there was a common intention that she would have a beneficial interest. None of this was explicit; did it need to be? There was no prenuptial agreement.

[2] Lloyd Ramdeen feels betrayed, and says so. On his account, it came as a nasty shock when Claudette Ramdeen filed an action in this court pursuant to the Married Women's Property Act claiming:

- a) A one half beneficial interest in the property at 4 Terry Close, Hope Pastures, Kingston 6 in the parish of Saint Andrew registered at Vol. 1041 Folio 662;
- b) The amount of US\$26,856.15, representing a half share of the monies held jointly by Claudette Ramdeen and Lloyd Ramdeen in account numbered RAM0000017 at JN Fund Managers as at December 20, 2002;
- c) A 50% interest in the proceeds of a 1997 Honda Accord motor car licensed and registered 5523DD to Lloyd Ramdeen;
- d) A 50% interest in the Proline 25 foot pleasure boat purchased in Key West, Florida;
- e) The entire interest in the furniture, appliances and household effects at 4 Terry Close, Hope Pastures, Kingston 6 in the parish of St Andrew;

[3] The facts briefly were that Claudette Ramdeen and Lloyd Ramdeen commenced a relationship in 1986 while they were both employees at C.I.B.C. Twin Gates Branch. During the course of the relationship and prior to getting married, they were joint owners of property at Lot #11, 6 Waterloo Avenue, St. Andrew and property at 1214 NW 167th Avenue, Pembroke Pines, FL 33028 in the United States. They also held joint accounts at C.I.B.C., Jamaica National Fund Managers and Jamaica National Building Society, in addition to one account in the United States.

[4] In 1995, property at 4 Terry Close, Hope Pastures, Kingston 6 was purchased in the sole name of the Lloyd Ramdeen. Claudette Ramdeen contends that she was given the assurance that notwithstanding the absence of her name from the title, the property was

hers as well, in keeping with the pattern of joint ownership engaged in by them before.
(This was denied by Lloyd Ramdeen)

[5] Claudette Ramdeen also says that having placed reliance on these assurances given by Lloyd Ramdeen, she sent cash sums to him in order to assist with the purchase of the property at 4 Terry Close, Hope Pastures. In addition, she says that she assisted with the furnishing and decoration of the property, and this was all done on the basis that she would share in that property. Lloyd Ramdeen denies that he received any money from Claudette Ramdeen for the purpose of investing in the purchase of the 4 Terry Close property, but admits that she did send some furnishings and household effects for the purpose of furnishing the home.

[6] Sometime in 2001, Lloyd Ramdeen purchased a 1997 Honda Accord motorcar which was registered in his name. Claudette Ramdeen says that it was purchased from joint funds, and that although the car was purchased in the name of Lloyd Ramdeen it was their intention that they both would own the car jointly. (This was denied by Lloyd Ramdeen)

[7] In March 2002, Lloyd Ramdeen purchased a Proline 25 ft. pleasure boat named "Venture". Claudette Ramdeen also contends that the funds used to purchase the boat were joint funds. She says that Lloyd Ramdeen was in a position to purchase "Venture" as she had undertaken the responsibility for the expenses and costs of their joint property at Pernbroke Pines, as well as by her maintaining their child in the United States. (This was denied by Lloyd Ramdeen).

[8] Claudette Ramdeen also alleges that Lloyd Ramdeen had full use of the money in their joint accounts and all the other assets owned by them until the marriage started to

break down in 2002. The final break in the marriage occurred when Lloyd Ramdeen excluded her from the property at 4 Terry Close, Hope Pastures, and later removed her name from the account RAM0000017 at Jamaica National Fund Managers.

[9] It is common ground between the parties that:

- a) The property at Lot 116 Waterloo Avenue was purchased in the joint names of the Lloyd and Claudette Ramdeen in 1989.
- b) The property at 4, Terry Close, Hope Pastures, was purchased in the sole name of Lloyd Ramdeen in 1995.
- c) They both had a son, born in September 1997.
- d) Lloyd and Claudette Ramdeen jointly purchased property at 1214 NW 167th Avenue Pembroke Pines, FL 33028 in the United States.
- e) Lloyd and Claudette Ramdeen were married in October 2000.
- f) They had joint accounts at Jamaica National Building Society, Jamaica National Fund Managers and C.I.B.C.
- g) Sometime between 1994 and 1995, Claudette Ramdeen sent US\$16,000.00 to Lloyd Ramdeen in Jamaica.
- h) Claudette Ramdeen purchased household items for the home at 4 Terry Close, Hope Pastures, Kingston 6.

[10] There are three issues for consideration:

- a) Firstly, as a question of fact, whether or not Claudette Ramdeen made any financial contribution towards the purchase of the house at 4 Terry Close together with the furniture, appliances and household effects therein; the Proline foot 25 pleasure boat; and the 1997 Honda Accord motor car, sufficient to give her a beneficial interest in them;
- b) Secondly, if not, was there a constructive trust, i.e. a common intention between Lloyd and Claudette Ramdeen that she would acquire a beneficial interest in; the property at 4 Terry Close together with the furniture, appliances and household effects therein; the Proline 25 foot pleasure boat; and the 1997 Honda Accord motor car;
- c) Thirdly, if there was a constructive trust, whether or not Claudette Ramdeen acted to her detriment in reliance on that common intention between them that she would acquire a beneficial interest;

The First Issue: Did Claudette Ramdeen make a direct contribution to the purchase of the properties claimed sufficient to give her a beneficial interest in them?

[11] Where both parties contributed funds towards the purchase of property, a resulting trust arises in favour of the person whose name is not on the title of the property. That person is, therefore, entitled to a beneficial share in the property in proportion to the contribution made. See **Petit v. Petit**.¹

[12] Claudette Ramdeen contends that she ought properly to have a beneficial interest in the property at 4 Terry Close, Hope Pastures, Kingston 6. She says that prior to her mar-

¹ [1969] 2 All ER 385 at page 390

riage to Lloyd Ramdeen they both decided to purchase the house at 4 Terry Close in Kingston 6 to settle as a family. She said that she contributed US\$30,000.00 to the purchase of the property using money which she earned as a nurse in New York, USA. (There is no supporting documentation to sustain Claudette Ramdeen's assertion that her salary as a nurse at the St. Patrick's Home N.Y. USA exceeded US\$30,000.00). She conceded that there were no passbooks or other documentary evidence to support her claim, as she sent cash to Lloyd Ramdeen in Jamaica, or gave him the cash when he visited the USA.

[13] On the other hand, Lloyd Ramdeen contended that he purchased the property at Terry Close without any contribution from Claudette Ramdeen. He said that the purchase price of the property was \$5 million of which \$3.2 million was financed by mortgages secured by himself and the balance of \$1.8 million came from the sale of the matrimonial home, of his previous marriage, at 45 Hart Boulevard in Hope Pastures. He said that he paid the initial deposit, the mortgage cost, as well as the cost of the sale and transfer. He said that Claudette Ramdeen sent him US\$16,000.00 in 1994 or 1995 with a request that he deposit it to her savings account, which he did. He said that the amount deposited to her savings account was returned to her in 1997 at her request (The return of the money was denied by Claudette Ramdeen).

[14] I find that Lloyd Ramdeen gave credible evidence about how he came by the funds to purchase the property at 4 Terry Close. He gave details of the loans totalling \$3.2 million, made up from a \$2 million loan from CIBC; a \$700,000.00 loan from CIBC Building Society; and a \$500,000.00 loan from NHT. He was also able to give details of the sale proceeds from the sale of his house at 45 Hart Boulevard, which netted him \$1.8 million. These sums, when added together, amount to the purchase price for 4 Terry Close, Hope

Pastures, which was \$5 million. He remained unshaken by the cross-examination of Mrs. Ramdeen's attorney.

[15] On balance, the court prefers Mr Ramdeen's account as being more credible. Claudette Ramdeen provided no evidence that the funds, which she allegedly contributed, were ever applied to the purchase price of the 4 Terry Close property, while Lloyd Ramdeen was able to show how the funds were obtained and invested.

[16] As far as the purchase of the 1995 Honda Accord motorcar and the Proline Pleasure boat, Claudette Ramdeen has conceded that she was unable to present independent evidence that these items were purchased from joint funds, or indeed, that she made any contribution to the purchase of the assets.

[17] The court concluded that there was no direct contribution to the Terry Close property, the Honda Accord motorcar or the Proline Pleasure Boat "Venture". Accordingly, we will move on to consider the second issue.

The Second Issue: Was there a common intention between Lloyd and Claudette Ramdeen that she should acquire an interest in any of the properties claimed?

[18] The House of Lords decision in **Lloyds Bank v Rosset** is the starting point for any discussion on the approach by the courts to resolve disputes regarding beneficial interest in property. Lord Bridge had this to say²:

"The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or ex-

² [1991] 1 A.C. 107 at page 132

ceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.

In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust."

[19] Lord Bridge made reference to two categories. First, where there has been discussion between the parties at the time of the purchase and it can reasonably be inferred that they intended the person who is not the legal owner to have a beneficial interest. Second, where there is no evidence of any discussion or agreement regarding their respective interest, but the common intention between the parties can be inferred from their behaviour at the time when the property was acquired.

[20] In our own jurisdiction this principle has been applied in Gasson Elias Azan vs. Dawn

Genevieve Azan where Forte J.A said³:

"In determining whether there was a common intention to share the beneficial interest an express agreement to that effect would be sufficient. However, where, as in most cases, there is no such agreement, the common intention of the parties may be inferred from their words or conduct."

[21] Claudette Ramdeen contends that she was given an assurance by Lloyd Ramdeen that she would share in the property at 4 Terry Close, and in reliance on these assurances, she acted to her detriment. In her evidence, she asserted that subsequent to the purchase of the 4 Terry Close property she discovered that her name was not on the title. She said that she raised this with Lloyd Ramdeen and he told her that the loan was from the bank and their policy did not recognize common law unions. The benefit of obtaining the loan from the bank was that he would have the advantage of a lower interest rate. She said that Lloyd Ramdeen assured her that despite the absence of her name from the title she was entitled to half of the property and that "fact would never change". She said that she believed his assurances, as it was customary for them to own property jointly prior to the marriage. She cited the joint ownership of the apartment at Waterloo Avenue as an example of this. She said that in relying on his assurances she worked on making the 4 Terry Close property their home and shipped items of furniture and other household articles to Jamaica. She said she returned to Jamaica in December 1996 and began living there. She also contends that the Proline 25 foot pleasure boat named "Venture" and the 1997 Honda Accord motorcar were purchased by Lloyd Ramdeen in his name from their joint accounts and that it was always intended that she would share in these items.

³ SCCA 53/87 at page 3-4

[22] To be sure, the existence of a common intention to share in property under the circumstances outlined in this case is difficult to substantiate. In order to establish a constructive trust, Claudette Ramdeen must show that there was a common intention or agreement between her and Lloyd Ramdeen that the property would be shared. In addition, she must also show that she acted to her detriment in relying on that common intention. Claudette Ramdeen is unable to point to an expressed conversation with Lloyd Ramdeen, before or during the acquisition of the property, that would ground a constructive trust. She has also failed to show any detrimental reliance — she was always living abroad and was unaffected by the status of the 4 Terry Close property in Jamaica.

[23] On the other hand, Lloyd Ramdeen denied that he ever told or assured Claudette Ramdeen that she was to have a share in the 4 Terry Close property. He pointed to the fact that he got married to her in October 2000 (some five years after the acquisition of the 4 Terry Close property) and that they had acquired other property jointly during that time. This he argued tends to show that it is more probable than not that it was never intended that she should have an interest in the 4 Terry Close property.

[24] Under cross-examination Claudette Ramdeen admitted that:

“Before the purchase of the property he did not give me an assurance that the property was jointly held, it was not necessary. I cannot recall whether the assurance was given a year or two after the property was purchased.”

[25] Two things arise from this statement. First, was the common intention that Claudette Ramdeen refers to, a shared intention, or just in her mind? In **Springette v Defoe**⁴ it was

⁴ [1992] 2 F.L.R. 388

held that a common intention of parties in relation to the beneficial interests in a property must mean a shared intention communicated between them; it cannot mean an intention which each happened to have in his or her own mind but had never communicated to the other. I find that the intention referred to by Claudette Ramdeen was not communicated to Lloyd Ramdeen at the time of the acquisition of the 4 Terry Close property.

[26] Second, in **Gissing v Gissing** Lord Diplock in dealing with the issue of drawing an inference from the common intention of the parties about joint ownership of land, made it clear that there is a difference between what the parties did and said before and after the acquisition of the property. He said:⁵

“In drawing such an inference, what spouses said and did which led up to the acquisition of a matrimonial home and what they said and did while the acquisition was being carried through is on a different footing from what they said and did after the acquisition was completed. Unless it is alleged that there was some subsequent fresh agreement, acted upon by the parties, to vary the original beneficial interests created when the matrimonial home was acquired, what they said and did after the acquisition was completed is relevant if it is explicable only upon the basis of their having manifested to one another at the time of the acquisition some particular common intention as to how the beneficial interests should be held.”

[27] It is not disputed that both Claudette Ramdeen and Lloyd Ramdeen acquired joint property in the course of their relationship. Firstly, the property at 6 Waterloo Avenue which they acquired prior to the marriage and then later the property in Pembroke Pines in Florida, which they acquired after the marriage. Claudette Ramdeen has used this fact to argue that as it was customary for them to acquire property jointly during their relationship,

⁵ [1971] A.C. 886 at page 906

this indicates that there was a common intention for her to share in the property at 4 Terry Close. However, in **Hammond v Mitchell**⁶ it was held that although there is a common intention to share in the beneficial interest in relation to one property, this does not necessarily justify an inference of intended proprietary interest in other properties. That argument therefore fails.

[28] As far as the joint account between the Lloyd and Claudette Ramdeen is concerned, the case of **Jones v Maynard**⁷ offers some guidance. In that case the parties operated a joint account in which both parties deposited their income and in which both parties routinely withdrew funds. Although the husband's deposits were greater than the wife's and there was no agreement as to the parties' rights to the account, the court held that the wife was, nevertheless, entitled to half the closing balance of the account.

[29] In this case, Claudette Ramdeen contended that account RAM0000017 at Jamaica National Fund Managers was enjoyed jointly between herself and Lloyd Ramdeen and that she is entitled to share in the account. She does not expressly state that she deposited any money into this account. It is a simple assertion that the account was in their joint names and funds from a joint CIBC account which was closed in 2002 was transferred to that account.

[30] However, when shown the records under cross examination, Claudette Ramdeen recanted and agreed that there is no evidence of a transfer of funds from the CIBC account to the JN Fund Managers account. She also agreed that there was no documentary proof

⁶ [1991] 1 WLR 1127

⁷ [1951] Ch. 572

that she made any deposits to the account. She is relying on the simple fact that her name was placed on the account at some point in time.

[31] It is the law that a wife may substantiate a claim to property by way of the presumption of advancement. A special relationship such as a marriage will ground a presumption that property shared during that time or that money in a bank account which was held jointly without any contribution from the applicant was in fact a gift. In **Lynch v Lynch**⁸, the court held that the presumption can be rebutted if the defendant shows that at all times he intended to retain whole or part — depending on the circumstances — of the equitable interest in the property in question or that there was no gift but only an arrangement for convenience or the actions of the parties are otherwise explainable.

[32] Any serious claim for a beneficial interest in the US dollar account at Jamaica National Fund Managers can only be based on the presumption of advancement. This claim can still be sustained even though Claudette Ramdeen had insisted that she made a direct contribution and has subsequently admitted that this was not so.

[33] On the other hand, Lloyd Ramdeen contended that the money belonged to his father who had given it to him to invest on his behalf. He said that he put Claudette Ramdeen's name on the account as a safeguard when his father's health was deteriorating bearing in mind his own health problems but later removed her name when he began to suspect that she was likely to spend the money. Finally, he asserts that he withdrew the money and closed the account when his father's health deteriorated and the money was needed to meet his medical expenses.

⁸ [1991] 28 JLR 8

[34] It is clear from the evidence and documents submitted that no money was placed into the account apart from the initial deposit and various payments of interest from the bank. So then, having regard to the authority of **Jones v Maynard**,⁹ in order for a trust to arise in relation to a joint account, the parties must operate a joint account. From the evidence, in this case Claudette Ramdeen made no contributions to or did any act in relation to that JN Fund Managers account. Consequently, any claim based on contribution or involvement in the account must fail.

[35] As far as her claim under the principle of the presumption of advancement is concerned, the presumption may be rebutted. This can be done if Lloyd Ramdeen proves that the money was intended to be wholly his father's and he never made a gift of any part of it to his wife. I must confess some initial difficulty with Lloyd Ramdeen's explanation of why there was a need to put Claudette Ramdeen's name on the account in circumstances where there were other siblings who were alive and close at hand.

[36] On the other hand, there is no evidence that Lloyd Ramdeen placed any money into the JN Fund Manager's Account apart from the initial deposit. At the time when the initial deposit was made, his father's name was on the account. He says that the money came from an account that was previously opened for his father at CIBC. This evidence I found to be credible and there is no other evidence to challenge it. The presumption of advancement is rebutted and Claudette Ramdeen's claim to half of the funds in the US\$ Jamaica National account therefore fails.

⁹ Previously cited

[37] As far as the furniture and other household effects claimed by Claudette Ramdeen are concerned, Lloyd Ramdeen has admitted that these items were purchased by her. He says that some of the items were sold and the proceeds sent to the Claudette Ramdeen. There was no supporting evidence of this. He has, however, admitted that the total value of the items purchased by her was about US\$4,000.00. Claudette Ramdeen on the other hand values the items at about US\$15,000.00. She also cannot find any supporting evidence for this. In the circumstances, the court will give judgment to Claudette Ramdeen for the amount admitted by the Lloyd Ramdeen as the value of the household furniture and other items purchased by her, which is the Jamaican equivalent of US\$4,000.00. There is no order as to cost.