

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY

SUIT NO. 1991/E269

BETWEEN	BLONDEL SHIRLEY	APPLICANT
AND	ADRIAN DWIGHT SHIRLEY	DEFENDANT

Gordon Steer for Applicant instructed by Carl Dowding of Knight Pickersgill Dowding and Samuels.

Anthony Pearson for Defendant instructed by Playfair, Junor, Pearson and Company.

Heard: May 4, 5 and June 18, 1992.

RECKORD, J.

The plaintiff and the defendant in this matter are the registered owners of 12 Farrington Crescent in the parish of St. Andrew comprised in Certificate of Title registered at Volume 1042, Folio 390 of the Register of Titles; and the defendant the registered owner of 40a Mannings Hill Road in the parish of St. Andrew comprised in Certificate of Title registered at Volume 1124 Folio 302, and Friendship, part of Emile in the parish of St. Catherine comprised in Certificate of Title registered at Volume 1053 Folio 642.

On the 20th of August, 1991 the plaintiff, under the Married Women's Property Act, filed an originating summons asking this court for orders to be made with respect thereto:-

- (a) What is the respective interest of the applicant and the defendant in the abovementioned properties and furniture, fixtures and equipment.
- (b) That the defendant should take no steps by sale assignment to have in the said properties and furniture, fixtures and equipment or do any act whatever to create any right title or interest therein.
- (c) An order that a report on and valuation of the premises be taken or alternatively that a valuation agreed upon by the applicant and the defendant be taken.
- (d) And generally for a still further order that the defendant be restrained from acting with regard to the said properties to the prejudice of the applicant.
- (e) Such costs as are incidental to the proceedings.

It is not disputed that the parties were married on the 4th of November, 1967, and separated in 1981 when the plaintiff took up residence in the United States of America and have been living separate and apart since then.

In her affidavit evidence the applicant said that during the course of the marriage they pooled their income with a view to owning their home and business. They both entered into a contract to lease/purchase a business known as Swaby's Hardware. After about 2 months she left the Government Service to join the business on a full time basis. She was not paid a salary but given money only to defray household expenses.

In 1975 Swaby's was destroyed by fire and from their joint savings they commenced other businesses including Pussy Cat Boutique, Yogurt Shop, Genos Fast Food and in 1979 Tramp's Boutique. This business under her personal management "flourished and became the big income earner." Still she was not paid a salary and all profits were placed in a joint savings account. It was from this joint account that the three properties were purchased including furniture, fixtures and equipment. She was therefore claiming that she was beneficially entitled to 50% of all properties.

She was cross-examined on her affidavit. She agreed she had made no lodgments to their joint account since she left in 1981. Before she left the defendant had told her of his intention to purchase the Mannings Hill Road premises and what it was to be used for. She made no direct contribution to the purchasing and building of the shopping plaza there. She lived with defendant on the property in St. Catherine but her name is not on the title. She has raised the question about her name not being on the St. Catherine property but he would always reply - "What is yours is mine and what is mine is yours". Before she left Jamaica she participated in all defendant's business adventures. During the latter part of the 70's the defendant was incarcerated in Miami and during this time she transacted business on behalf of the defendant. She was not certain of date of purchase of the St. Catherine property but it was during the time they operated the hardware. Although her name is not on the title it was

not purchased without her knowledge. Funds for the purchase of the St. Catherine property came from proceeds of the hardware store. She had invested time, labour and sacrifice in its purchase. Funds for the purchase of Mannings Hill Road came from Traups. She had no idea where the funds came from for the construction of the plaza. She made no withdrawals from any of their savings account.

The applicant denied telling anyone including her mother that she had no interest in the property in St. Catherine or Mannings Hill Road. The St. Catherine property was in Kitson Town and was purchased from a Mr. Kitson. She did not remember the purchase price. Finally, she denied that she has made claims on these properties because the defendant has done well for himself.

The defendant, in his affidavit evidence, denied that the lease of Swaby's Hardware was to both of them - it was to him alone. He admitted that they operated a joint savings account but that account had no money. He also agreed he and his wife moved between the businesses they operated out that she gave up her interest in Traups Boutique and opened up a Garment Factory. He claimed that most of his income came from a wholesale clothing business. He admitted purchasing 12 Farrington Crescent while he was incarcerated in Miami and putting his wife's name on the title although she was unaware of the purchase. It was about 2 years after his wife left the matrimonial home that he acquired Mannings Hill Road and built a shopping place there and that the applicant made no contribution. He admitted owning a farm at Kitson Town, St. Catherine, but that the applicant contributed nothing. He has substantially refurbished 12 Farrington Crescent and did repairs after the hurricane to which the applicant contributed nothing.

Under cross-examination the defendant admitted that his wife worked with him while Swaby's Hardware was in operation. He purchased the Kitson Town property in 1972 and it became their matrimonial home. After the fire at Swaby's in 1975 they went into a clothing business - his wife was part of it. This business changed names and was relocated, but his wife was an integral part of these businesses - "we were working together".

They had two businesses going in Spanish Court and his wife was a part of each. They acquired 'Mikes' which subsequently changed to 'Genos' and both he and his wife operated them. He admitted "It is true, as wife said, that I controlled the money in general. I had lots of other business going on apart from the store business."

The defendant was re-examined. The deposit for Kitson Town was from sale of a generator and obtained mortgage from the Administrator General for Jamaica.

When questioned by the court the defendant said, "We have no dispute with Farrington, my only dispute is with Kitson Town and Mannings Hill."

Mr. Steer for the plaintiff submitted that her evidence that she worked at Swaby's without any salary has not been challenged. He referred to the cases of Nixon v. Nixon (1969) 3 AER 1131 and Josephs v. Josephs - RMCA 13/84 (unreported) and claimed that a wife who worked in the business was entitled to a share in the business as also the acquisition of other properties from the profits. Only source of income when Kitson Town was purchased was Swabys. The mortgage payments were also paid from the profits of Swabys. By not accepting salary and being told "what is yours is mine and what is mine is yours", the wife acted to her detriment and the defendant ought not to profit from the fruits of her labour. No claim was being made to 'Niccoles' or the wholesale clothing business since they were acquired after the breakdown of the marriage.

The defendant would not be entitled to any benefit from refurbishing of Farrington Crescent. See Muetzel v. Muetzel (1970) 1 AER 445 - No figure has been pleaded for the refurbishing. In addition the defendant has had the benefit of residence.

On behalf of the defendant Mr. Pearson submitted that there has been no challenge that Farrington crescent had been substantially refurbished and repairs done since the hurricane. The court could direct that enquiries be made as to value of repairs and refurbishing to determine the interest of the parties.

The case of Pettitt v. Pettitt (1969) 2 AER 385 shows that the court has no jurisdiction under the Married Women's Property Act to pass interest from one party to another, therefore the court cannot alter the interest in respect of either Kitson Town or Mannings Hill road -

Re 40A Mannings Hill Road:

In respect of this property Mr. Pearson submitted that the plaintiff has no interest in it at all- She made no contribution and invested neither time, labour nor made any sacrifice.

Re Kitson Town

Here again, Attorney for the defendant claims the defendant made the down payment and arranged mortgage. The plaintiff knew nothing as to how it was paid for.

Re Farrington Crescent

The plaintiff's interest in this property should only be determined after an inquiry into costs of refurbishing and repairs.

Conclusion

The husband having admitted that there is no dispute as to his wife's interest in Farrington Crescent, the only question left to be determined is what is the extent of her interest. When this property was acquired the parties were still happily married. It was registered in their names jointly. They occupied it as their family home. It is well settled law that in the absence of intention to the contrary, they hold the beneficial interest in equal shares.

In Harris v. Harris SCCA No. 1/11 Campbell, J.A. said at page 20, "There being no sufficient evidence adduced to rebut the presumption of advancement or any relevant evidence of what share each was to have in the event the presumption was not rebutted, a half share interest is by implication of law advanced to the appellant."

In Glissing v. Glissing (1970) 2 AER at 792 Lord Diplock said: It is only if no such inference can be drawn that the court is driven to apply as a rule of law, and not as an inference of fact, the maxim "equality is equity" and to hold that the beneficial interest belongs to the spouses in equal shares.

It is claimed that since the breaking up of the marriage, substantial refurbishings had been done to the house and repairs done after the 1968 hurricane.

In Muetzel v. Muetzel (supra), Edmund Davis L.J., said at page 445, "the fact that one spouse spends money on extension of that house does not mean that the other can claim no part of the increased value of the property resulting from the extension. On the contrary, in the absence of a specific agreement, the extension should be regarded as accretions to the respective shares of each and not as affecting the distribution of the beneficial interests. In other words, the divisors must stand whether applied to the house in its original or in its extended form." Accordingly, the house in its refurbished form is to be held in equal shares.

I now come to deal with the Kitson Town property. When the parties were married in November 1967, the applicant was 19 years old and the defendant one year older. There is no evidence that either had any assets then. They together operated Swaby's Hardware. This was their only source of income. In 1972 while Swaby's was in operation the defendant purchased Kitson Town property. The defendant provided the deposit and obtained a mortgage to take care of the purchase price. There is no evidence where the money came from to service the mortgage. Up to when Swaby's was destroyed in 1975, that was their sole source of income. Kitson Town had become their matrimonial home. In their other business ventures she worked without a salary - the defendant admitted he controlled the money and this continued until the breaking up of the marriage in 1981. They had worked together for over twelve years. There is no evidence as to what was the intention of the parties when Kitson Town was purchased. The applicant admitted she made no direct contributions to the purchase. But what about her indirect contributions?

In Nixon v. Nixon (1969) 3 AER 1133 Lord Denning said;

"What is the position of a wife who helps in the business? Up and down the country, a man's wife helps her husband in the business. She serves in the shop. He does the travelling around. If the shop and business belonged to him before they married, no doubt it will remain his after they marry. But she by her work afterwards should get some interest in it. Not perhaps an equal share, but some share. If they acquire the shop and business after they marry and acquire it by their joint efforts - then it is their joint property, no matter that it is taken in the husband's name. In such a case, when she works in the business afterwards she becomes virtually a partner in it - so far as the two of them are concerned and she is entitled, prima facie, to an equal share.

Test it this way, If the wife had gone out to work and had earned wages which she brought into the family pool out of which the shop and business were bought - she would certainly be entitled to a share. She should be in just as good a position when she serves in the shop and receives no wages. The wife's services are equivalent to a financial contribution. And it has repeatedly been held that when a wife makes a substantial financial contribution she gets an interest in the asset that is acquired."

Carey J.A. in *Josephs v. Josephs* (supra) expressed similar views to those of the learned Master of the Rolls.

He said at page 23;

"Her unpaid services demonstrate in my view, cogent evidence of the joint nature of their endeavours, and ought not to be dismissed as a trifling contribution. There is also to be added her share of the profits. I would characterize the wife's total contribution as substantial. It is neither fair nor just that her efforts should count for naught and she should be driven out, if the husband has his way, empty handed." And continued at page 24

"In my judgment where parties have laboured jointly in acquiring property and the wife's contribution is largely indirect, for example, in providing unpaid services to a joint business which thus allows the husband to derive profit or to increase his earning capacity, and thereby to make a direct contribution larger than the wife's, the right and just approach is that the parties share equally."

I find that the contribution made by the applicant in the various businesses they operated was substantial and enabled the defendant to acquire the Kitson Town property and accordingly she is entitled to the beneficial interest in the property with the defendant in equal shares.

Finally, I now turn to the property at 10A Mannings Hill Road. The evidence discloses that this property was acquired by the defendant in 1985. The applicant admitted she migrated in 1981 to United States of America and has made no lodgement to their joint savings account since then. She did not know when discussions began regarding its purchase, with whom it began, when it was purchased and from whom, terms of payment or any other material factor. After she left Jamaica she made no significant contribution to the businesses that were then being operated. There is no evidence as to their common intention at the time it was bought. Her name was not included on the title. Upon what basis can it be said that she is entitled to a share in the beneficial interest? I can find none. There is no advancement; there is no common intention; there is no contribution. It may be of some significance that the applicant said that although she had raised with the defendant the absence of her name on the title to Kitson Town, she had not raised the question concerning the

absence of her name on the title to Mannings Hill Road.

I therefore find that the applicant is not entitled to share in the beneficial interest in the property at 40A Mannings Hill Road.

With reference to the originating summons the respective interest in the premises at 12 Farringdon Crescent, St. Andrew and premises at Friendship in St. Catherine is half-share each.

The applicant has no interest in the premises at 40A Mannings Hill Road.

If a valuation cannot be agreed up between the parties regarding the first two mentioned properties, then a valuation of the said properties to be done by a valuator agreed upon by the parties who will bear the costs in equal shares.

Costs to the applicant to be agreed or taxed.