

JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN HIGH COURT CIVIL DIVISION

CLAIM NO. HCV-2212 OF 2004

BETWEEN **DELVINA WEIR** **CLAIMANT**
AND **ELISHA WEIR** **DEFENDANT**

HEARD: April 3, October 26 2006.

Mr. Gordon Steer instructed by Chambers Bunny & Steer for the Claimant.

Mrs. Janet Taylor instructed by Taylor Deacon & James for the Defendant.

Mangatal J:

1. This is an application by a wife for determination by the Court of questions under the Married Women's Property Act. The wife claims to be entitled to a fifty percent interest in property at Retreat, also called Bybrook, in the Parish of Saint Elizabeth.
2. The husband says that despite the wife having made minimal contributions to the house, she is entitled to a twenty five percent interest in the property and no more. She is also entitled to all the furniture and appliances provided by her, and a motor car as he says he did not contribute to the purchase of any of those items.
3. **The Wife's Case.**

The wife in her Affidavit sworn to on the 24th August 2004, states that she and the husband were married on the 23rd of August 1997. They are both Jamaicans who had migrated to England and eventually returned to live in Jamaica. In January 1997 they were both in Jamaica on holiday when a friend told them about a piece of land in Santa Cruz which was for sale. The parties looked at the

property and liked it. The wife discussed her interest in purchasing the property with the husband but he indicated that he did not have any money for the purchase. The wife organized the payments for the land. The purchase price was \$450,000.00 and the wife used her savings as well as contributions from her children to meet the deposit as well as the first payment. The husband contributed the sum of \$100,000.00 towards the final payment and the wife contributed the remaining \$50,000.00. The husband used the proceeds of sale from his former house as his contribution, though the wife says that the husband now resided with her and was being supported by her.

4. The wife signed the First Agreement For Sale without the husband because, according to her, the land was hers. Subsequently, Attorneys for the vendor Mr. McLean drafted a more detailed Agreement For Sale, and included the husband's name. The wife says she did not seek any legal advice at that time and she did not realize that by signing the Agreement for Sale the husband could become an equal owner of the property. That more detailed Agreement has not been put in evidence before me although the husband agrees that he did at some point see an Agreement for Sale which named both the wife and husband as purchasers.
5. The parties both soon returned to Jamaica to build on the land as it was their intention to build their matrimonial home. An estimate for construction was prepared in writing and it is addressed to and directed to both parties. The parties decided that they would pay for the house by the husband using some of the proceeds of sale of his former house and the wife would use the rest of her savings.
6. According to the wife, she was transacting important business so she sent the husband to oversee that the house would be ready for the parties to move into. She sent £7,000.00 to the husband to ensure that the house was completed. The husband borrowed an

additional £5,000.00 from his cousin and \$40,000.00 from his brother which the wife says she had to repay. When the wife arrived in Jamaica, she paid for the services of an electrician to help complete the house and she also paid to fence the property, install grill gates, landscape the property and construct a proper walkway. In relation to the interior of the house, the wife paid for the installation of light fixtures, fans and doors.

7. **The Husband's case.**

In his Affidavit sworn to on the 12th November 2004, the husband says that while he and the wife were not yet married and were vacationing in Jamaica, he learnt of the subject land being for sale. He was interested in purchasing it. He says that he pointed out to the wife that he had no money to purchase the property at that time and the wife offered to loan him the money for the deposit to secure the property until he was able to come up with the funds. The husband agreed. The wife has denied that there was any loan as she says that she intended the house to be her matrimonial home.

8. Soon after the husband returned to England alone and later learnt that the wife had received funds from the United Kingdom and had paid the deposit of \$150,000.00 to the vendor which the husband says was paid on his behalf. While the husband was in England and after the wife had also returned, she demanded that the husband repay the loan and he gave her a total of £2,000.00 thereby repaying the loan.
9. The wife and husband decided to move to Jamaica permanently and so he put his house in London up for sale and the said house was sold in the first six months of 1997 for gross proceeds of £130,000.00. The husband received a little over £90,000.00 from the sale of the house after clearing liabilities and costs. The proceeds of sale were deposited at the Nationwide Building Society,

Brixton Branch, until the 29 August 1997 when the husband withdrew the sum of £72,000.00 which he had the bank transfer to an account the husband had opened with the Victoria Mutual Building Society in Jamaica. The wife says that the Victoria Mutual Building Society Account was in their joint names as she also had money in that account.

10. The parties were married on the 23rd of August 1997 and they returned to Jamaica in that year and remained for a period of six months. The husband says that during this period the house was being built using the funds which he had transferred to his Victoria Mutual Building Society Account earlier that year. The husband also paid the remaining Ja. \$300,000.00 which was owed to the vendor Mr. McLean on the purchase of the land from the money in the said account.
11. The Husband and wife returned to London. Whilst in London the husband withdrew a further £6,000.00. He returned to Jamaica shortly after. The £6,000.00 was utilized in the completion of the house and when the husband returned to Jamaica work continued on the house. The wife remained in London after completion of the house and forwarded the husband the sum of £5,000.00 which the husband used to purchase paint, to pay painters, add some fixtures and fittings, and to properly complete the house.
12. The husband goes on to state that the land was never intended to be owned by the wife, who contributed to the purchase only what the husband has described above. The husband says that there was an Agreement for Sale drawn up in 1996 which stated that the land was to be conveyed into both their names but the said Agreement was signed solely by the wife as the husband was out of the country at the time. The husband has no knowledge of a more formal Sales Agreement than that exhibited to the wife's Affidavit dated 10th January 1997 and he further states that the Agreement

exhibited is not known to him. The husband says that he did borrow the sum of £5,000.00 from a relative of his which the wife paid back. However he did not borrow Ja. \$40,000.00 from his brother. His brother loaned him \$13,000.00 only and the wife repaid that sum.

13. At no time, says the husband, has the wife ever supported him and he did not at any time reside with her prior to their marriage in August 1997.
14. The husband admits that the wife has through her various contributions obtained an interest in the property but he denies that she is entitled to a fifty percent share. He asks the court to make an order declaring the wife's entitlement to a twenty five percent interest in the property and giving him an option to purchase her share.
15. There are a number of other Affidavits filed in the matter by the parties, and there are Affidavits filed by other persons on behalf of the wife. I do not feel it necessary to go through those Affidavits in detail, but suffice to say that when the parties were cross-examined, I had an opportunity to assess their demeanour and credibility and I found the wife more credible and forthright than the husband.
16. In cross-examination the husband said that the Agreement for Sale which he signed had the wife's name on it. He says he did not fuss or object that the wife's name was on the contract. He did not make a fuss because he thought she was an honest and fair person. He also stated that the house that was built was built for both parties to live in because they got married after.
17. I agree with the wife's Counsel Mr. Steer that if the husband is saying that he paid substantially all of the money for the purchase of the land and the construction of the house, and he also admits that the Agreement for Sale for the land which he signed after he

was married was in both their names and he made no fuss about it, it may be arguable that the presumption of advancement is raised.

18. However, in my view, the wife's stronger position lies with Mr. Steer's alternative argument in reliance on the common intentions of the parties and contributions. I accept that if on the contract both names appear, and the husband knew about it and he made no fuss, a common intention to acquire the property together has clearly been established. The estimate by the architect was addressed to both the wife and the husband. Once that common intention has been identified, an act to the wife's detriment or significantly altering her position in reliance on the agreement, gives rise to a constructive trust or proprietary estoppel. Where there is no express agreement the court can 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 installments, will readily justify the inference necessary to the creation of a constructive trust. These points are discussed with great clarity in the House of Lords decision **Lloyd's Bank plc. v. Rosset** [1990] 1 All E.R. 1111, at 1118h- 1119c.
19. I agree with Counsel for the wife that the husband has conceded that the wife made substantial contributions in a number of ways and I find as a fact that the wife did make substantial contributions to the purchase of the land and to the construction of the matrimonial home. I reject the husband's evidence that the wife paid any money towards the deposit on the husband's behalf as a loan to him. I also do not accept that the husband repaid the wife any money in respect of this alleged loan. It can be inferred

from these contributions by the wife that she was making them because there was a common intention for both to own the property beneficially.

I also accept and agree that it is not possible to identify and quantify the wife's contributions with any precision, and in such circumstances the courts have readily accepted that equality is equity.

20. I therefore make the following Declarations and orders:

- a. The wife and the husband are each entitled to a fifty percent interest in the property being land part of Retreat also called Bybrook, in the Parish of Saint Elizabeth, being the quarter acre of land referred to in Sale Agreement dated 30th January 1997, the boundaries of the land therein referred to being , north, on lands of Neville McLean, south, on lands of Valrie Watson, east, on lands of Anthony Lalor, and west, on lands of V. Lewis.
- b. A report on and valuation of the property is to be taken or alternatively agreed upon by the wife and the husband and the costs of this valuation are to be shared equally by the parties.
- c. Each party shall be at liberty to negotiate the purchase of the other's share by the 28th of February 2007.
- d. In the event that the negotiations referred to in subparagraph (c) above are unsuccessful, or do not take place, the property is to be put up for sale on the open market.
- e. The Registrar of the Supreme Court is empowered to sign any and all documents necessary to effect, or bring into effect any and all orders of this Honourable Court if either party is unwilling to do so.
- f. Furniture, appliances and motor car are declared to belong to the wife.

- g. Costs to the wife agreed at \$75,000.00.
- h. Liberty to apply.