IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E.100 OF 2001

BETWEEN	SEYMOUR BLACKWOOD	APPLICANT
A N D	CLAUDETTE BLACKWOOD	RESPONDENT

Mr. H.S. Rose for the Applicant.

Mr. Leighton Miller for the Respondent.

Heard: 25th September, 2001, 28th September, 2001 and 3rd October, 2001

Campbell, J.

The parties were married on the 29th September, 1998. The husband/applicant was then aged 60 years, and the wife, 34 years. In 1995 the applicant who had lived all his adult life in the United Kingdom, had returned to Jamaica for the purpose of attending the funeral of his uncle, when he met the respondent. On his return to the United Kingdom he maintained communication with the respondent. This resulted in the respondent landing in the United Kingdom after she sought his assistance 'in having her come to England'. The respondent was denied entry at Gatwick Airport, and returned to Jamaica.

The applicant deponed that he next visited Jamaica on the 17th September, 1998 and after a "brief period of courtship", the couple was married. The applicant was then retired, he remained in Jamaica until January, 1999.

On returning to England, the applicant withdrew monies from his account in TSB Bank in which he had accumulated the sum of £24,000.00. He owned premises at

#43 Chadwick Avenue, Allenton, Derby, England, which he sold. He deponed that this sale was effected in order", to acquire a home in Jamaica that I would use as my residence".

The respondent, is described by the applicant in his further affidavit dated 4th September, 2001, as having had "no resources to put forward to any purchase as when I married her she was unemployed and between then and up to the period of September, 2000 when I left the house I am not aware of the Respondent working or operating any business or having any other source of income other than monies that I remitted to her for her maintenance".

The Respondent describes herself as a businesswoman, she provides no details of the nature of her business, and does not traverse the applicants assertions that she has no resources and was unemployed.

The husband contends that he made remittances, sufficient to close the purchase of the disputed property. His home in England he had sold 'as quickly as possible and was forced to accept less than full market value'. He sold the home for £39,000.00, from the proceeds he sent £31,000.00 to his bride on the 30th July, 1999. Several documents relevant to the purchase of the home were forwarded by the Respondent to him in the United Kingdom which he duly signed and returned.

The Applicant remained in England until November, 2000, during this period he asserts he remitted sums of monies for his wife's maintenance. On his return to Jamaica, whilst still in the process of unpacking, 'the many gifts and other items I brought for her, "he was directed to a small folding bed in a corner of the living-room and was advised that was where he would be sleeping. On further inquiry he was

advised that the other bedrooms were occupied by her teenagers and other relatives. Later, she advised him 'she had a man'. He complained that her general behaviour and attitude caused him to seek legal counsel. Her relations treated him 'with disregard, disrespect and general unkindness" as a result he was forced to seek alternative accommodations.

The Respondent on the other hand states that they met in 1995 and were married in 1998. The husband resided abroad. Shortly after they were married her husband and herself had discussions about '*living accommodations for me*', and we agreed that we would purchase a home for *me* to reside. She asserts that the applicant at the time of purchase, advised that he was not ready to return to Jamaica permanently, as he had properties to dispose of abroad. The applicant denies that the so advised her, and says that having been married he opted for voluntary redundancy from the company where he worked.

The Respondent says that as a result of the discussions with her husband they commenced a search for a suitable house. This search led them to Lot 3536 Eltham View. She depones at paragraph 6, "*that there was never any doubt that the property agreed to be purchased was firstly for my benefit* "and secondly, for our benefit collectively". However, at paragraph 23 of her affidavit, she states, "that at all material times it was the intention of the applicant and I that the property would be our matrimonial home and we would be joint legal and beneficial owners of the said property." The Respondent alleges that although the Applicant knew that they were both the owners of the property since September, 1999 he had not objected to that state

of affairs until he realized that their marriage had deteriorated to the point of being irreconcilable.

She further states that of the purchase price a payment of $1,400,000 came solely from her personal funds. According to her, despite this input there was still a shortfall that necessitated obtaining loans of $698,250.00 and $58,800.00, from the National Housing Trust in order to complete the purchase. She maintains that her husband was informed of the need for the loans and had in fact signed the mortgage agreements. She depones, that the purchase price of the property was $2,800,000.00.

There appears to have been some agreement between the parties to a purchase price of $3,200,000.00. The Respondent conducted the transactions in relation to the purchase. It is clear that the applicant laboured under the impression that the purchase price was $3,200,000.00, at paragraph 14 of his affidavit, he states;

> "That these monies were sent for the purpose a part payment on Lot 536 Irish Drive which my wife and I agreed to purchase for $3,200,000.00".

The two receipts appended to the affidavit of the Respondent purporting to be that of the vendor express a purchase price of $3,200,000.00. In contrast, (see paragraph 7) respondent affidavit of. the Certificate of Title, the Agreement for Sale, and the Attorney at law Statement of Account, all have the purchase price as being $2,800,000.00. The total cost inclusive of the attendant duties fees and legal cost is $2,959,320.00. No explanation is given for this contradiction in the in the purchase price of the property on the respondents case.

The Applicants Amended Summons filed on the 22nd February, 2001, seeks, that;

1. The Applicant, SEYMOUR BLACKWOOD be declared the sole beneficial owner of premises lot 536 Eltham View also known as 536 Irish Drive. Registered at Vol. 1231 Folio 540 and that the Respondent has no interest herein.
2. That the Court makes an Order that the Respondent execute a transfer transferring sole beneficial ownership to the Applicant of premises registered of Titles cancel Certificate of Title Registered at Vol. 1231 Folio 540 and issue a new certificate in the name of the applicant subject to the mortgage of the National Housing Trust.
3. That there be such further and/or other relief as the Honourable Court deems just.

The Respondent has urged the Court, that;

1. She be declared entitled to one-half beneficial interest in the property.
2. That the property be sold and the proceeds be divided between the parties.
3. That the cost attendant on such sales be borne by both parties equally.

It was submitted on behalf of the applicant that there is no evidence of a common intention that the wife should acquire a one-half beneficial interest in the property. Mr. Rose submitted that the husbands evidence is that he acquired it for his residence and the wife, for her part, deponed that it was acquired primarily for her sole benefit, and secondarily for them 'collectively'.

It was further submitted by the applicant that between 22nd January, 1999 and 9th February 1999, the husband sent £7,500.00 or J$447,975.00, for the purpose of purchase of 536 Eltham View. Later in February he sent an additional $16,000.00 or J$985,545.00 After, the sale of his home in the United Kingdom, the £31,000.00 he remitted brought the total sum sent to the respondent to J$3,310,125.00 This sum was

exclusive of the monthly sums of between £40 to £150 which he sent each month for his wife's maintenance. There was no challenge raised to these assertions.

The Respondent claims to have paid the sum of $1,400,000.00 of her own funds to the vendors Attorney-at-law. She alleges that this sum was stolen by the said attorney-at-law along with the funds of other of his clients. This was her sole contribution that the evidenced. In her affidavit dated 18 June, 2001, filed in opposition to the application she states at;

Paragraph 8

> "That upon paying the said sum the vendor directed me to his Attorney-at-law, Mr. Kevin I. Martin, of 10 Swallowfield Road, Kingston 5, in the parish of St. Andrew. I attended upon the office of the said Attorney-at-law and on the 25th day of January, 1999 and o the 4th day of February, 1999, I paid over the sum of $280,000.00, $400,000.00 and $27,500.00 respectively to the said Attorney-at-law. I exhibit hereto identified by mark 'C.B.2' copies of the said receipts."

Paragraph 9

> "That upon paying the said sums to the Attorney-at-law, an Agreement for Sale was drafted and both the Applicant and I executed the said Agreement for Sale. The Agreement stipulated that we would hold the said property as joint tenants. I exhibit hereto identified by the mark 'C.B.3' a copy of the said Agreement for Sale."

Paragraph 10

> "That on or about the 29th day of April, 1999, I paid over to Mr. Kevin Martin the sum of $1,400.000.00 on account of the purchase price of the said property. I exhibit hereto identified by the mark 'C.B.4', a copy of the receipt evidencing payment of this said sum to Attorney-at-law, Kevin Martin."

Paragraph 11

> "That the said sum of $1,4000.00 came solely from my funds, all other previously paid came from the Applicant (emphasis mine)"

Paragraph 12

> "That subsequent to paying the said sums over to the said Attorney-at-law, I learned on the news that Kevin L. Martin had been arrested for Fraud. I further learnt that the said Kevin L. Martin had defrauded several clients of funds that had been entrusted to him for the purpose of carrying out diverse transactions. Regrettably the Applicant and I were among the several clients defrauded by Mr. Kevin L. Martin."
>
> Paragraph 13
>
> "That I made every effort to recover the said sum from the Attorney-at-law, along with other clients of the Attorney-at-law."

Eventually in frustration I gave up attempting to retrieve the said sum as I further learnt That the said Attorney-at-law was found guilty of the said offence and incarcerated. I further learnt that the said Attorney-at-law had no assets upon which I might have been able to levy execution pursuant to a Judgment.

Mr. H.S. Rose, on behalf of the Applicant, submitted that the receipt in respect of cheque tendered in payment on the 29th Januuary, 1999, in the amount of $400,000.00 (see paragraph 8) was one and the same as the receipt in respect of the payment of $1.4M on the 29th April, 1999, in that it had the same receipt number #002449, and was evidence of the same cheque #476368-476369 tendered in payment. The differences noted between the receipts were, the addition of the figure '1' before the amount of $400,000.00 which the respondent had paid in on the 29th January, 1999 to cause that sum, to become the sum she alleged she paid on the 29th April, 1999 that is, $1,400,000.00. The second change Mr. Rose noted, was the alteration of the figure '1', in the date 29/1/1999, to the figure '4', to cause that date to become 29/4/1999 (the

date of the alleged payment of $1.4M). The effect of this submission was that that receipt was not a genuine document.

After Mr. Rose's submission, Counsel, for the Respondent, quite properly, in my view, informed the Court he was "reselling" from the allegations deponed to in paragraph 10 of his client's affidavit, as they were false and misleading. No explanation was given by the affiant for the inclusion in her affidavit of such a false and misleading piece of evidence. I find that the applicants contribution of $J3,301,125.00 was sufficient to cover the consideration money of J$2,800,000.00 for the property in addition to all the consequential cost of $159,320.00, leaving a balance in excess of $300,000.00. The applicant complains that his wife refuses to discuss the transactions with him, and to give an account of her expenditures.

The Respondent has said that prior to the payment she made on the 29th April, 1999 (the said $1.4M), all previous payments were the funds of the applicant. However, paragraph 25 of the Respondent affidavit claims that payment totalling $2,547,500.00 was made towards the purchase, by the 9th February, 1999 whereas the Applicant had only remitted $1,449,840.00, a difference of $1,097,660.00, the clear implication being that she paid the difference. This payment would have been prior to the 29th April, 1999. The allegations in paragraph 25 and paragraph 11 are contradictory. I find as a fact that no contributions were made to the purchase price by the Respondent. I find that the applicant did provide his wife with a sum adequate for her maintenance (paragraph 22).

Was there a common intention at the time the property was acquired as to the interest each party should take.

In Petit vs Petit 1970 A. C. P. 777 at page 813, Lord Upjohn said;

> 'The property may be conveyed into the names of both spouses jointly in which case evidence is admissible as to the beneficial ownership that was intended by them at the time of acquisition and if, as very frequently happens as between husband and wife such evidence is not forthcoming, the Court maybe able to draw an inference as to their conduct. If there is no such available evidence then what are called the presumptions come into play.'

The husband was a retired man. He had sold his home in England. He had withdrawn his entire savings and committed it to the purchase of a home. This home was not acquired through the joint efforts of the parties. The parties had co-habited for a very brief period – approximately four months. The applicant had poured more funds into the acquisition than had been necessary. Is it a reasonable inference in these circumstances that he would give this property to the Respondent primarily for her sole use and enjoyment, as she alleged. I think not. He had deponed that the acquisition was intended to be his residence. She had said it was primarily for her sole benefit. I find that there was no common intention between the parties in relation to the disposition of the property at its acquisition.

The law provides that where property is acquired with the funds of one spouse and later conveyed into the joint names of both spouses the holder of the legal estate holds the property on a resulting trust for the person who provided the monies.

This is expressed in Equity and the Law of Trusts 2nd Edition by Philip H, Petit, at p. 93, thus:

> 'Whenever a man buys either real or personal property and has it conveyed or registered or otherwise put into the name of another, or of himself and another jointly, it is presumed that that other holds the property on trust, for the person who had paid the purchase money. The classic

> statement of the law is to be found in the judgment of Eyre C.B. in Dyer v Dyer (1788), 2 Cox. Eq. C. 92.
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> > The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold copyhold or leasehold; whether taken in the names of the purchasers and others jointly, or in the name of others without that of the purchaser; whether in one name or several; whether jointly or successive-results to the man who advances the purchase-money'

Where a special relationship exits, as in this case of husband and wife, it will be presumed that the person who paid the purchase money or transferred the property intended to make a gift to the person in whose name the property was transferred in this case the wife. This presumption is rebuttable. The Applicant acted with expedition, in seeking legal counsel, and in the prosecution of his rights, this is important as acquiescence will strengthen the presumption. The modern approach has seen a diminishing of the effect of this presumption.

In Falconer v Falconer (1970) ALL ER 449, Lord Denning Mr, Said;

> "If this case had come up for a decision 20 years ago, there would have undoubtedly have been a presumption of advancement; because at that time whenever a husband made financial contributions towards a house in his wife's name, there was a presumption that he was making a gift to her. That presumption found itself in the law in Victorian days when a wife was utterly subordinate to her husband. It has no place, or, at any rate, very little place, in our law today, see Petit v Petit per Lord Reid, Lord Hodson and Lord Diplock. We have decided these cases now for some years without much regard to a presumption of advancement, and I think we should continue to do so."

The brief period of the courtship the fact that the house represented a large percentage of his material possession serve to rebut the presumption that he was

making her a gift of an interest in the house. This, acquisition was not a joint enterprise, it was solely funded by the Applicant.

In Rimmer v Rimmer (1952) 2 ALL ER 863 Denning, L.J. said:

> "In cases when it is clear that the beneficial interest in the matrimonial home or in the furniture belongs to one or other absolutely, or it is clear that they intended to hold it in definite shares, the Court will give effect to their intention.
>
> Where the shares are capable of precise calculation, that measure should be applied. In this case, the applicant has evidenced that he made the entire contribution, one hundred percent. That is the measure to be applied."

In Gissing v Gissing (1969) 1 ALL ER 1043, Lord Pearson said;

> "I think also that the decision of cases of this kind has been made more difficult by excessive application of the maxim Equality is Equity." No doubt it is reasonable to apply the maxim in a case where there has been very substantial contributions (otherwise than by way of advancement) by one spouse to the purchase of the property in the name of the other spouse but the proportion borne by the contributions to the total price or cost is difficult to fix. Bur if it is plain that the contributing spouse has contributed about one-quarter, I do not think it is helpful or right for the Court **to feel obliged to award either one-half or nothing." (emphasis mine)**

I find that the applicant is entitled to the entire beneficial interest in the home. That the Respondent has no beneficial in the property.

In the particular circumstances of this case where the sums provided exceeded the consideration money for the purchase of the property the Respondent is not entitled to recover the mortgage payments that she made.

I hold that there was a resulting trust in favour of the Applicant in respect of the joint interest of the Respondent.

ACCORDINGLY, IT IS HEREBY DECLARED THAT;

4. 1. **DECLARATION THAT THE APPLICANT SEYMORE BLACKWOOD IS THE SOLE BENEFICIAL OWNER OF LOT #536 ELTHAM VIEW IN THE PARISH OF SAINT CATHERINE REGISTERED AT VOL. 1231 FOLIO 540 AND THAT THE RESPONDENT HAS NO INTEREST THEREIN.**

5. 2. A declaration that the Respondent holds the said property upon trust for the Applicant entirely.

6. 3. It is hereby ordered;

7. That the Respondent EXECUTE A Transfer transferring sole beneficial ownership to the Applicant of premises registered at Vol. 1231 Folio 540, failing which the Registrar of the Supreme Court, be entitled to execute the transfer on behalf of the Respondent.

8. 4. There shall be costs to the applicant to be taxed if not agreed.