

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO C.L. 1990/B205

BETWEEN	GEORGE BLAIR	CLAIMANT
A N D	EMILY WARMINGTON	DEFENDANT

Mr. Sylvester Morris for Claimant.

Mr. Rudolph Smellie instructed by Daley Thwaites & Co. for the Defendant.

BROOKS, J.

Heard: 9th & 25th May & 3rd June, 2005

George Blair and Emily Warmington lived together in an intimate relationship between 1972 and 1986. When he went to live with her at her house, she resided in a one-roomed board structure on land leased by her. By the time he left, the title to the land had been transferred to Miss Warmington as owner and the residence had been transformed into a concrete structure.

Though there is disagreement as to the size of the building at the time that he left, Mr. Blair claims that these developments are substantially as a result of his financial contributions and his building skills. He therefore asks the court to declare that he is entitled to a one half interest in the property.

Miss Warmington asserts that the transformation was due to her sole efforts; financing every stage of it, including paying Mr. Blair for his supervision of the construction.

The court has the task of deciding who is the more credible of the two, and of determining to what, if any, interest is Mr. Blair entitled.

The Facts

Mr. Blair testified that when he went to live on the land, she “had it on lease and sale and we decide (sic) to buy it from Mr. Albert Smith and we went ‘round there and bought it from Mr. Albert Smith”.

He said that on moving in, he joined with her and paid the lease. Mr. Blair explained how the \$950.00 purchase price was paid in instalments.

He testified that the purchase was finalized when Mr. Smith, Miss Warmington and himself, went to a Mr. Bravo, a Justice of the Peace, and Mr. Bravo prepared the title document.

Mr. Blair testified as to the construction of the concrete structure, giving details as to the purchasing of materials, recruiting of labour and implementing his skill as a builder and a carpenter in erecting the building. He produced bills that he said were for some of the materials purchased. Miss Warmington’s name was on a delivery slip as having received the material itemized therein. Mr. Blair insisted that this construction was almost entirely at his cost, and that Miss Warmington’s only contribution was to purchase some of the zinc used for the roofing.

On the question as to the state of the building when he left the premises, Mr. Blair denied suggestions that it was only a single-roomed concrete structure that was there when he left. He insisted that after that single-roomed structure was completed, a second construction phase was commenced and was eventually completed. It was done in the same way, as was the first. He said he financed that construction and saw it through to the end. It consisted, he said, of a living room, a bathroom and a verandah.

In cross-examination he volunteered that he knew that a kitchen had been constructed after he had left the premises and spontaneously declared that he had had nothing to do with that construction.

I shall return to some other aspects of Mr. Blair's testimony later, but I will now turn to that of Miss Warmington.

Miss Warmington painted a very unattractive picture indeed of Mr. Blair. She says that she met him in a bar and that he was unemployed at the time. She eventually took him into her home that she shared with her three children. She says that he would only work "now and then" and that she had never seen him work on any house.

In so far as his contributions to the household were concerned, Miss Warmington said that during the time that they lived together Mr. Blair spent his money only on "rum, racehorses, and cigarettes"; he paid no money to

buy food or to settle bills. She testified that when asked for a contribution he would ask her where was he to get money.

The purchase of the land, Miss Warmington testified, took place in 1976. She said that she discussed purchasing the land with Mr. Blair but he didn't agree to give her any money.

She testified that when she decided to build the concrete structure around the existing wooden one, she discussed it with Mr. Blair. She says he declined involvement saying, "he wasn't building any house on any woman (sic) land because he know he soon gone leave (her)".

Miss Warmington says that Mr. Blair did not weaken his resolve. She says that although he lived in the house and shared in its comforts, sparse as they were, she had to provide all the money to build the new structure.

She said:

"He said if me can give him the money to build it, him will build it, he will spend the money and buy materials."

Consequently she says:

"I gave him the money to buy materials, to pay the workmen and to pay himself."

Miss Warmington also specified what it was that Mr. Blair did:

"He just supervise the work, he did not do any carpentry work."

and further:

“During the construction of the one room he did not contribute any money to buy materials or to pay workmen.”

She also differed significantly from Mr. Blair in respect of the second phase of the construction. Miss Warmington testified that there was only a single one-roomed concrete structure in place when Mr. Blair left in 1986. She says that after he left she caused to be constructed, a second room, a bathroom, a verandah and a kitchen, all at one go. On this account, Mr. Blair obviously did not contribute to this construction in any way.

In assessing and comparing the evidence of these witnesses I was far more impressed with Mr. Blair’s testimony and demeanour.

On the issue of the title, whereas Mr. Blair said that the Deed of Indenture was created as the final aspect of the transaction, Miss Warmington states that it was prepared on the occasion of the first payment.

Apart from the fact that it is highly unlikely that the vendor Mr. Albert Smith would have delivered a title before payment was completed, there was also another very curious aspect to this document. Both parties testified that the only Justice of Peace who had anything to do with the transaction was Mr. Bravo, and that Mr. Bravo signed the title document, which is the Deed of Indenture. An examination of the document reveals that the signature of the Justice of the Peace does not in any way resemble the word ‘Bravo’. It

resembles the word 'Adlam' and the initials of the Justice of Peace appearing later in the document appear to be the letters "C.H.A".

When Mr. Blair was presented with this document he immediately denied that this was the document that was prepared by Mr. Bravo. He pointed out that his signature should have been at the bottom if this were the document that Mr. Bravo had prepared.

I find that this document was not the one prepared by Mr. Bravo. That however does not provide an answer to the question of in whom the beneficial interest vests.

Miss Warmington had leased this property at first in 1968. The lease was for five years at a yearly rate of £10.0.0 (\$20.00) payable half- yearly.

I find that her stated earnings of \$20.00 per day for two to three days per week as a banana packer and a supplement of a further \$20.00 per day as a domestic worker in 1973 are exaggerated. There would have been no need for the lease agreement to have specified half-yearly payments if she were earning a full year's lease in a single day. She did not speak to any special concession given her by Mr. Smith.

I find that Mr. Blair having joined her in living at her house contributed to the lease and contributed to the purchase price for the land.

Mr. Blair said quite clearly that though it was he who negotiated a lower price with Mr. Smith, Mr. Bravo had him (Blair) sign as a witness while Miss Warmington's name was at the top of the document as a purchaser. Mr. Blair said he did not know why that was so. He however clearly accepted the situation even though, according to him, he had paid one half of the purchase price, and that they had both put the money in Mr. Smith's hand.

I find that the fact that Miss Warmington was the person who had leased the property from Mr. Smith was a major factor in her being designated the purchaser of the land in the Deed of Indenture.

As far as the issue of the construction is concerned I readily accept Mr. Blair's version of the events. He demonstrated an intimacy with the course of the construction that convinced me not only that he was responsible for designing and overseeing the construction of the first single room but also the second phase as well. He described how he "lined out" the building, described the types of roofing used in each phase of the construction and named persons who worked on the building.

He was able to produce bills that spanned the period March 1976 to October 1978. On both accounts this first single-room took some time to be

completed. Mr. Blair described a two-year period and I accept that it did take that length of time due to the irregular supply of financing.

Significantly, however, Mr. Blair also produced a bill for materials bought in 1980. This bill was for two hundred six-inch blocks and five bags of cement. It is in the name "Kentish Blair" of "Knollis, Bog Walk". Mr. Blair says that he is Kentish Blair and the goods were used on the house in question. There is no evidence of any construction requiring blocks and cement having taken place between the two phases of construction. This bill assists me in accepting Mr. Blair's account that he financed, and was involved in, the second phase of the construction.

Mr. Blair called as a witness a Mr. Alphanso Smith who testified that he worked as a mason on both stages of the building at the behest of Mr. Blair and that it was Mr. Blair who paid him and the other workers. Mr. Smith showed a remarkable ignorance as to the persons who did work on aspects of the building closely connected with his aspect of the work. He was however able to name some of the other workers who worked on the building and this was in a context where improper collaboration with Mr. Blair was unlikely. I believe that he did work on the building in two separate phases, but that he would not have known the source of the financing of the construction. His ignorance outlined above could be explained by the fact

that the work was done in fits and starts as financing became available, and that workers were recruited as the funds became available.

Miss Warmington on the other hand didn't have any details about the construction. She says she left everything to Mr. Blair; she trusted him. She says he told her how much money the construction would require and she gave it to him. She spoke of giving him \$20,000.00 at first and then \$25,000.00 to complete the first phase of the construction.

She says that she got the first sum of money from her "partner draw". She did not disclose the source of the second sum. This is a lady who was working (on her account) for \$20.00 per day as a packer at the Banana Board and as a domestic helper. She said that the children's father supported them, but that apart from that assistance she solely supported the household.

I do not believe her. The evidence does not support her sourcing that level of money on that income.

In addition, the construction would have been completed in a much shorter period if that level of financing were available. For example, documents provided show that two doors were bought for a total of \$105.00. A deposit of \$35.00 was paid initially, a payment of \$50.00 on account was made almost a month later and a final payment of \$10.00 made three months after that.

It may be that other explanations could exist for this, but the paucity of funds seems the most probable, in the context of the financial situation of these two people.

Based on his evidence in these areas, which I accept as truthful, I find that Mr. Blair financed the construction and was instrumental in both the first and second phases of the construction.

Mr. Blair was not however always truthful. He testified that the reason why he left the house was that he was sick and that Miss Warmington was not taking care of him. This was in sharp contrast to the explanation given by his counsel, Mr. Morris in opening the claimant's case. I did not believe Mr. Blair's testimony as to why he left the premises but I find that that failure to speak the truth does not affect the issues to be resolved in this trial.

The Law

Having made the findings of fact as I have, what is the effect in law of the situation?

It has long been established that the court, in these matters, must look to see who has provided the financing for the purchase of the asset and secondly what was the intention of the parties at the time of the purchase.

I have already found that Mr. Blair contributed to the cost of acquiring the asset. I find also that he did not intend that the acquisition be for Miss

Warmington's sole benefit. He says that they each contributed one half of the purchase price. I am not convinced that that is so but there is no other evidence to which I can turn to determine proportions. I am convinced however that their intention was that they would both benefit from this property, without thought of shares.

The result is that the maxim of "equality is equity" may be properly applied in this case (See Trouth v. Trouth (1981) 18 JLR 409). I find that although the title was placed in Miss Warmington's sole name, she holds the legal interest in trust for them in equal shares.

I rely on the authority of Forrest v. Forrest (1995) 48 WIR 221. In that case the Court of Appeal reviewed the principles laid down in cases such as Pettitt v. Pettitt [1969] 2 All E.R. 385. Though both were cases involving spouses, it is my view that the principles apply to a case of persons living together in an intimate committed relationship such as I find this was.

There are numerous cases on which this view is based, including Grant v. Edwards [1986] 2 All E.R. 426 and Hammond v. Mitchell [1992] 2 All E. R. 109. The main distinction between the two types of cases is that there is no presumption of advancement to be applied.

The case of Forrest, cited above, is also authority for the principle that subsequent expenditure on the asset by one party, in the absence of specific agreement, does not alter the beneficial interests of the respective parties.

Applying this principle it means that even though I accept Mr. Blair's testimony, on a balance of probabilities, as to how the cost of construction was funded, I find that there was nothing agreed between the parties that would have resulted in his beneficial interest in the property becoming greater than hers. What this expenditure does however, is confirm, in my view, that he did consider that he had an interest in the property. I reject Miss Warmington's evidence that he told her that he is not spending money on any woman's property.

These improvements were of a substantial nature. Indeed the dwelling house was replaced by a more substantial structure. This is different from the fact situation outlined in Pettitt.

Before concluding this matter I shall deal with two somewhat peripheral matters. The first is that there was an issue made of whether Mr. Blair planted fruit trees and constructed a chicken coop on the land. I find those items to be of such an ephemeral and insubstantial nature as not to affect the issue before the court. Mr. Blair himself pooh-poohed the matter of the chicken coop.

The second involved a prayer for mesne profit that was made in the Statement of Claim. No evidence was produced in respect of that matter and Mr. Morris did not pursue it. I therefore shall make no ruling on it.

Conclusion

I find that on a balance of probabilities that Mr. Blair's account of the financing of the purchase of the property and the cost of construction of the replacement dwelling house is to be preferred to that of Miss Warmington. I find that together they bought and developed this land for their joint benefit. There is no indication as to their having anything other than equal interests in the property. As a result I find that his expenditure entitles him to a beneficial interest in the property, which interest is equal to hers.

Based on these findings I order as follows:

1. The Claimant George Blair is entitled to an undivided one-half interest in all that parcel of land with dwelling house thereon situated at Shenton, Bog Walk in the parish of Saint Catherine, being the land described in a Deed of Indenture executed by Albert Smith on the 21st day of August 1976 and being the land in the possession of Emily Warmington.
2. The said land be valued within sixty days of the date hereof by a registered appraiser agreed upon by the parties or

failing agreement by an appraiser appointed by the Registrar of the Supreme Court. The cost of the valuation is to be borne equally by the parties but advanced by the Claimant.

3. Miss Emily Warmington shall be entitled to purchase the interest of Mr. George Blair in the land within ninety days of the date of the valuation report being served on her. Should she fail to enter into a binding agreement to purchase the said interest within the time specified, the land shall be sold on the open market either at public auction or by private treaty.
4. The Registrar of the Supreme Court shall be entitled to sign such documents or take such steps as shall be necessary to give effect to this order should either or both of the parties fail or refuse within seven days of being so required in writing so to do by the other party or by the said Registrar.
5. There shall be liberty to apply.
6. Costs to the Claimant to be taxed if not agreed.