

NAMES

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY
SUIT NO. E.337 OF 1990

BETWEEN	MELVESTER CAMPBELL	APPLICANT
A N D	JELLISCO CAMPBELL	DEFENDANT

Enoch Blake and Miss D. Dodd for the Applicant.

Patrick Brooks for the Defendant

HEARD: 15th, 18th May, 1995, 25th, 26th
November, 1996 and 19th February, 1997

SMITH, J:

By Originating Summons dated 10th December, 1990 the wife/
applicant seeks a declaration as to her beneficial interest in:

- (a) matrimonial home situate at Lindo's Hill in the parish of Westmoreland.
- (b) property situate at Haughton Grove in the parish of Hanover.
- (c) property situate at Shettlewood in the parish of Hanover.

The applicant also claims beneficial interest in a Leyland motor truck bearing Registration Number CC.0964.

When the hearing began Miss Dodd told the court that the applicant would not at this time pursue her applications in respect of the Haughton Grove and Shettlewood properties, and that the applicant would confine her claim in respect of Lindo's Hill to one half interest in the chattel house. Based on the affidavit evidence before me then I endorsed the stance taken by Counsel.

The matter was adjourned to the 18th May, 1995 on the application of Miss Dodd for further affidavit to be filed in support of the applicant's claim in respect of the truck.

When the matter resumed on the 18th May Mr. Blake was present but Miss Dodd was absent. Mr. Jellisco Campbell was sworn and cross-examined by Mr. Blake. The cross-examination on that day centred around the motor truck.

The matter was part-heard and adjourned to the 22nd May, 1995. Unfortunately, the hearing did not resume until the 25th November, 1996 some eighteen months after the previous sitting. On the 25th November, 1996 Mr. Blake continued his cross-examination of the defendant. However, he did not limit his cross-examination to the application in respect of the truck but also questioned the defendant in respect of properties at Shettlewood and Haughton Grove and the land at Lindo's Hill.

Mr. Brooks did not object to this line of cross-examination. Mr. Blake's intention it seems to me, was to reinstate the applicant's claims which Miss Dodd had intimated that she would not pursue.

Although the evidence elicited by this exercise did not significantly affect the state of the affidavit evidence in so far as these properties are concerned I will nonetheless consider the applicant's claims that she has a beneficial interest in them.

The Lindo's Hill Property

The parties met around 1967. They lived together before getting married on the 20th February, 1970. The applicant's evidence is that during their pre-marital cohabitation the defendant's father gave him one quarter ($\frac{1}{4}$) acre of land at Lindo's Hill in Westmoreland. They constructed a two bedroom house thereon. They began occupying it before it was completed and before they got married. The house was completed in June, 1971.

The defendant in his evidence denied that his father gave him the one quarter ($\frac{1}{4}$) acre of land. He stated that his father "merely gave me permission to construct a chattel-house on lands belonging to him." His contention is supported by his father Mr. John Campbell who in an affidavit sworn to on the 9th March, 1992 stated that in 1969 he gave permission to his son Jellisco and his son's wife Melvester "to erect a moveable structure on lands belonging to me (father) at Lindo's Hill in the parish of westmoreland." He went on to say he "had no intention of parting with ownership of the said land."

Mr. John Campbell was not made a party to this matter. There

is no dispute that both parties own the beneficial interest in the "house." The real issue is whether or not the wife has a beneficial interest in the $\frac{1}{4}$ acre land on which this house is built.

For the applicant to succeed in her claim she must show that the person who holds the legal interest holds it in trust on her behalf. What is her evidence in this regard?

In her first affidavit she stated that the land was given to her then common law husband and that they commenced building a two bedroom house thereon. In her second affidavit she asserted that "the land was in fact a gift when marriage was contemplated."

Mr. Blake elicited from the husband/defendant during cross-examination that the verandah and toilet of the house were affixed to the land.

Counsel for the applicant submitted that the fact that the house with some "permanent features" were erected by both parties with the knowledge of the defendant's father is evidence which supports the applicant's claim that she has a beneficial interest in the land. I do not agree with this proposition. The general principle of law is that if A expends money on B's property, this does not give A any interest in B's property - Ramsden v. Dyson (1866) L.R. 1H L129. Equity will only come to A's aid, if B by his words or conduct induced A to act to his detriment in the reasonable belief that in so acting he was acquiring a beneficial interest in the property - Gissing v. Gissing (1971) A.C. 886. But even if Counsel is right this court may not make an order which will adversely affect the interest of Mr. John Campbell who is not a party to this suit.

I agree with Mr. Brooks that the applicant's claim to an interest in the land at Lindo's Hill fails for the following reasons:

- (i) There is no evidence that the defendant acquired any legal or equitable interest in the land whether for himself or on the plaintiff's behalf. In fact there is no documentary evidence before me as to who owns the legal estate in the land. The plaintiff has failed to show the existence of a resulting, implied or constructive trust.

- (ii) The court has no jurisdiction to make an order affecting the interest in the land in question inasmuch as Mr. John Campbell, who claims to be the owner of the legal estate in the land is not a party to the action.

Shettlewood

In her affidavit at paragraph 10, the applicant stated that "the funds earned over the years from the business carried on with the trucks was used by my husband to purchase the property at Shettlewood in the parish of Hanover and to build a house at Haughton Grove also in the parish of Hanover. The defendant in reply, asserted in paragraph 9 of his affidavit dated 9th May, 1991 that "the property at Shettlewood does not concern her as it was purchased from my sole earnings." The applicant in her second affidavit dated 27th May, 1991 did not refer to the property at Shettlewood.

In her second affidavit sworn to on the 18th June, 1991 the defendant stated "pursuant to para. 9 of my said affidavit I wish to say that all monies spent by me in the purchase of the lands at Shettlewood was (sic) derived from my earnings as a truck driver and at no time did the applicant contribute to the purchase of the same."

On the 15th February, 1993 the applicant made an application to the court for an order of discovery of documents of title. Pursuant to this order the defendant in an affidavit sworn to on the 20th May, 1993 stated at paragraph 2:-

"That in respect of the property at Shettlewood in the parish of Hanover I had in my possession the following documents of title:

- (a) Letter dated 25th June 1987, from the Land's Department.
- (b) Agreement to transfer dated 12th April, 1986.

The documents are presently with Mount Peto P.C. Bank, however I have copies of the same."

In paragraph 4 of the last mentioned affidavit the defendant

went on to say that other than the abovementioned documents he had "never had in his possession, custody or power any document of title for.....premises at Shettlewood....."

On the evidence before me it is agreed that the defendant purchased the land in question. It is also agreed that the money used to acquire this land was "earnings from the trucking business."

The applicant is basing her claim to a beneficial interest in the Shettlewood property on the fact that the purchase was funded by earnings from the jointly operated trucking business. It is important to note that there is no evidence before me as to how the earnings from the operation of the trucks were disbursed over the years. There is no evidence that the property was acquired by joint efforts for joint use. The unchallenged evidence is that the defendant bought this property for his own benefit. It seems to me that by analogy the principle governing the application of funds in a joint account is applicable here. That principle as stated in National Provincial Bank v. Bishop and Others 1965, 1 All E.R. 249 at 225 and followed by the Jamaica C.A. in Azan v. Azan S.C.C.A. 53/87 is:

".....where a husband and a wife open a joint account at a bank on terms that cheques may be drawn on the account by either of them, then,in the absence of facts or circumstances which indicate that the account intended or was kept for some specific or limited purpose each spouse can draw on it not only for the benefit of both spouses but for his or her benefit. Each spouse in drawing money out of the account, is to be treated as doing so with the authority of the other, and....if one of the spouses purchases a chattel for his own benefit or an investment in his or her own name, that chattel or investment belongs to the person in whose name it is purchased or invested; for in such a case there is no equity in the other spouse to displace the legal ownership of the one in whose name the investment is purchased."

Applying this principle to the circumstances of this case the inescapable conclusion is that there is no equity in the applicant to displace the ownership of the defendant in the Shettlewood property. The court may not on the evidence before it, impose a constructive trust.

Haughton Grove

The applicant in her ^{final} affidavit stated that "the funds earned over the years from the business carried on with the trucks were used by my husband to build a house at Haughton Grove also in the parish of Hanover.

The defendant in reply asserted that "the property of Haughton Grove does not belong to me" paragraph 9 of affidavit dated 9th May, 1991.

The applicant in an affidavit sworn to on the 27th May, 1991 deponed that the defendant constructed a building on the property at Haughton Grove and that sometime in 1985 or 1986 "when we were discussing reconciliation of our marriage" the defendant instructed me to obtain the service of an attorney-at-law to write to a lady who was in occupation of the premises along with himself giving her notice to quit...." (emphasis supplied). This indicates that the 'building' was constructed whilst the parties were living apart. Accordingly it cannot be argued that the applicant's claim is grounded in the existence of a resulting or implied trust since there could be no common intention as to ownership of the "building." The applicant's claim would therefore have to be based on a constructive trust.

In response to the aforementioned order for discovery of documents of title in respect of this property the defendant in his affidavit of the 20th May, 1993 stated:

".....in respect of the property at Haughton Grove in the parish of Hanover, I had in my possession at one time a form which I completed and returned to the Ministry of Agriculture in Kingston but I do not recall when this was done. I do not have a copy."

On the 25th November, 1996 the defendant during cross-examination by Mr. Blake attorney for the applicant, testified that he lives on the Haughton Grove property. He has been living there for over 8 years. Up to the time (i.e. 25/11/96) he had not heard from the government concerning his application to purchase the land. He said as far as he was concerned he was a squatter.

There is not sufficient evidence before me to establish the defendant as the beneficial owner of this property. Thus the defendant is neither the legal nor beneficial owner of this property. The applicant's claim must therefore fail.

The Trucks

The greater part of counsel's submissions had to do with the issue of the ownership of the trucking business.

The applicant in her first affidavit swore that "in March, 1975I went to Canada where I obtained employment and.....he (deft.) joined me in October of the same year. We both worked in Canada and my husband returned to Jamaica in 1976." She went on to say that when he was returning she gave him CAN\$1,800 which she had saved.

In paragraphs 8 and 9 of that affidavit she said "....upon his return to Jamaica, my husband invested the money I had given him together with his own funds in the purchase of a truck which said truck was used for haulage and hireage and substantial earnings were derived therefrom. The truck originally bought was sold and another purchased....." This she said continued over the years. The "business carried on with the trucks became our main source of income and wealth" she added. In a subsequent affidavit she claimed that the money (CAN\$1,800) was given specifically to assist in the purchasing of the truck.

Under cross-examination by Mr. Brooks she told the court that she spent eleven months in Canada and the defendant spent six. She later admitted she was not sure how long the defendant stayed in Canada but it was more than three months.

The defendant in reply, agreed that the applicant and himself were together in Canada, but denied that he received any money from her. He swore that he purchased the truck in question from his "own funds and bank loans and without any assistance from the applicant and all the successive trucks.....were purchased from (his) operation of same as a truck driver."

In an affidavit sworn to on the 23rd March, 1994 the defendant

gave further details of his involvement in the operation of trucks. From this affidavit it may be gleaned that he owned a truck which he sold before leaving for Canada.

To this affidavit he exhibited a Custom Entry Form in respect of the first truck he bought after returning from Canada. He stated that the approximate cost of that truck was \$8,000.00. He borrowed \$5,000 from the then Workers Savings and Loan Bank, he attached documentary support in respect of this loan. The balance of the purchase money he said came from the proceeds of the sale of a Fargo Truck he owned before leaving for Canada.

The applicant does not agree with this. In her final affidavit dated 16th May, 1995, she said that in 1971 they (her husband and herself) decided to purchase a used truck. Her husband was not working then she was the sole bread winner. She gave him \$1,000.00 to purchase a Bedford truck from one Mr. Cheddersingh. A stamped receipt purported to be signed by S.W. Cheddersingh was exhibited. It reads:

"Receive (sic) from Mr. Jellisco Campbell
the sum of Eleven Hundred Dollars for (1)
one Bedford Truck (Licence No. P.5387)."

She testified that the Bedford truck was sold and the money put towards the purchase of the Fargo truck. They had financial difficulties. It was then that she went to Canada followed by the defendant, her husband. But before leaving the defendant sold the Fargo truck and they agreed that the proceeds of sale should be put in the bank. This was done with a view to the defendant purchasing a truck through the All Island Cane Farmers Association.

The defendant did not yield the last word to the applicant. In his final affidavit dated the 18th May, 1995 he sought to refute the contentions of the applicant. From this affidavit the following emerged:

He was employed. It was his father Mr. John Campbell who purchased the Bedford truck from Mr. Cheddersingh in 1971.

This truck was old and beset with problems. He parked it at his father's house. With the assistance of Mr. Sangster the Fargo truck was bought.

He also filed an affidavit dated 16th May, 1995 and sworn to by Mr. John Campbell in which the latter stated that he bought the Bedford truck from Mr. Cheddersingh.

There is no dispute that the Fargo truck was sold prior to the defendant's departure to Canada. Also the defendant does not deny that the proceeds of sale were placed in a bank.

On the evidence the wife's claim to an interest in the truck now owned by the defendant is based on:

- (1) Her evidence that the business of operating trucks began with her funding the purchase of a Bedford truck; and
- (2) Her direct contribution of CAN \$1,800 towards the purchase of a truck through the All Island Cane Farmers Association after her husband returned from Canada.

Mr. Brooks submitted that the defendant's evidence that the applicant earned CAN\$65 per week whilst she was in Canada has not been denied.

On the applicant's account she was in Canada for eleven months. She remained two months after the defendant left to return to Jamaica. He argued that for her to give the defendant \$1,800 on his departure would mean that she would have had to save that amount from her earnings for nine months. It would take her seven months to earn \$1,820 spending nothing. If she is believed, he argued, it would mean that she saved three quarters of her earnings for these nine months. He asked the court not to believe her and to reject her evidence that she contributed towards the purchasing of the truck.

The defendant's evidence is that he earned CAN\$120 per week. He stayed in Canada for six months but did not get a job immediately after his arrival. In his affidavit of the 18th June, 1991 he said "to the best of my knowledge the only savings that were accumulated were

from my earnings which savings were left in Canada when I left...." When he was cross-examined by Mr. Blake he qualified this statement by saying he did not know if the applicant saved any money in Canada.

Whereas I agree with Mr. Brooks that it is improbable that the applicant saved \$1,800 from her earnings, I find as a fact that she saved a part of her earnings. It seems reasonable to conclude that the savings made were as a result of a joint effort. This, to my mind, is fortified by the defendant's evidence that he left all his savings in Canada and returned empty handed. It is probable that he did return with CAN\$1,800 albeit, not solely from the applicant's savings.

The pattern of the conduct of the parties during the marriage is relevant to a quest for the common intention of the parties.

A scrutiny of the evidence discloses the following pattern:

The parties together built a house on land at Lindo's Hill. They spent time together in Canada with a view to improving their financial position. They were partners in the operation of the Unique Boutique Store.

They operated a joint account at the then Workers Savings and Loan Bank. This pattern of conduct in my view, supports the applicant's contention that the parties were jointly concerned in the operation of the "trucking business."

I accept the applicant's evidence as outlined below. In 1971 the parties decided to purchase a used truck in order to start the "trucking business." The applicant gave the defendant \$1,000.00 to purchase the first truck i.e. the Bedford truck. This truck was sold and a Fargo truck purchased. The parties encountered financial difficulties. They decided to go to Canada. The applicant left first. The defendant sold the truck and placed the proceeds of sale in the bank. He then joined his wife in Canada. They worked and saved. The defendant returned to Jamaica with the savings and utilized the savings in the purchase of a truck through the All Island Cane Farmers Association. The applicant later joined her husband in Jamaica. The defendant left the matrimonial home in 1981. They were reconciled in

1985. In 1986 they started a business at Shop #9 Brooks Plaza, Savanna-la-mar known as Unique Boutique Store.

It is not clear on the evidence when the marriage finally came to an end. However in January of 1989 the parties entered into an agreement to discontinue the partnership of operating the Unique Boutique Store.

The Applicant's Share In Truck

The evidence is that in 1988 the defendant sold the Guy Truck for \$90,000.00. He purchased a 1986 Seddan Atkinson truck for \$210,000 and he borrowed \$150,000.00 towards the purchase and insurance of this vehicle. The loan was repaid from the earnings derived through the operation of the truck.

In light of this evidence the applicant's claim for one half (½) the value of this truck is, in my view, reasonable in all the circumstances.

The Unique Boutique Store

The defendant in his affidavit dated 9th May, 1991 sought a declaration that he is entitled to one half (½) share/beneficial interest in the "Unique Boutique Store." The applicant is not disputing this claim.

The defendant also sought a declaration in respect of property at 41 Rose Street, Savanna-la-mar. However this claim was abandoned by Mr. Brooks as there was no evidence to substantiate it.

Conclusion

- (a) The parties are each entitled to one half (½) share and/or interest in the chattel house at Lindo's Hill in the parish of Westmoreland.
- (b) The defendant is the sole beneficial owner of property situated at Shettlewood in the parish of Hanover.
- (c) The applicant has not established an entitlement to a beneficial interest in the property situated at Haughton Grove in Hanover.

- (d) The applicant is entitled to one half ($\frac{1}{2}$) the beneficial interest in Leyland Truck licensed CC.0964.
- (e) The parties are each entitled to one half ($\frac{1}{2}$) share and/or beneficial interest in the "Unique Boutique Store."
- (f) No order as to costs.