



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. HCV 01687 OF 2006

BETWEEN	JOHN DEAN	CLAIMANT
AND	DELORES CAMPBELL	DEFENDANT

Mr. Maurice Manning attorney-at-Law instructed by Nunes Scholefield Deleon & Co. for the Claimant.

Mr. Dennis Forsythe attorney-at-Law instructed by Forsythe & Forsythe for the Defendant.

Parties to a marriage – at the time of marriage defendant not divorced from previous spouse – construction of a dwelling house – whether defendant contributed – beneficial interests – title to property not conveyed to either party

Heard: January 13, 14, 15 & 16, 2009 & September 13, 2010

Thompson-James, J

Introduction

The parties met in 1993 in England. The Defendant was a married woman, not yet divorced. On February 10, 1994 they were married in Old Harbour, Jamaica. They arranged to set up home together. It was lot 182 Old Harbour Glades. On August 26, 1996 they entered into an agreement as nominees between the **Building Societies Development Limited** and the **Ministry of Housing** to purchase the lot. This was part of land comprised in a parent title registered at volume 137 folio 36 of the Registrar Book of Titles. At the time of the hearing there was no title to the land issued in the name of the parties.

The house was completed in 1996 and both parties lived in it. The Claimant continued to travel back and forth from London to Jamaica. About July 1997 the Claimant removed from the house permanently and returned to live in London with his daughter, claiming belligerence on the part of the Defendant.

The Claimant later discovered that the Defendant was married. The Defendant pleaded guilty to bigamy and was sentenced.

The Claim

The Claimant John Deans seeks against the Defendant Delores Campbell the following inter alia:

1. A declaration that the Claimant is entitled to 100% of the legal and beneficial interest in property located at 182 Old Harbour Glades, St. Catherine registered at volume 137 folio 36 of the Registrar Book of Titles.
2. A declaration that the Claimant is entitled to 100% legal and beneficial interest in the furniture.
3. An order that the Defendant gives up possession of the premises at 182 Old Harbour Glades, St. Catherine forthwith.

The Defence and Counter-Claim

The Defendant denies knowing that the Claimant was a builder or that he lived in UK from 1958. The Defendant says that the Claimant knew that she had not obtained a Decree Absolute when he got married to her.

The Defendant avers that she hired the labourers to dig the foundation and that she purchased building materials to the value of \$503,331.00. She paid a contractor, Clement

Henry \$270,000.00 for his labour services and borrowed \$350,000.00 from a Mr. O'Sullivan to help with expenses.

The Claimant knows nothing about the building of the structure on the Defendant's land. She paid the \$25,000 down payment. The £500 money order was not a contribution to the building of the house but to pay the Claimant's attorney's cost on another matter.

The Defendant denies that the Claimant is entitled to any of the reliefs claimed. The Defendant sought a declaration that she is the sole equitable owner of the property in dispute.

Counter-Claim

The Defendant Claims against the Plaintiff:

(1) repayment of loan made to the claimant to purchase coaster bus for \$620,000.00

on the 28th July 1997,

(2) loan of \$115,000.00 to the plaintiff on the 27th May 1997 to buy Leyland minibus.

(This counter-claim was not pursued).

Mr. John Dean's Account

Mr. John Dean testifies that he is a retired carpenter and builder who used to live and work in London, England. He worked from 1958 to 1990 and continued living in the United Kingdom until 1996.

In late 1993 he met Deloris Campbell in England. She informed him that she was 42 years old and single. A relationship developed. She related to him some of her personal matters. She informed him that she was not working and the State paid her rent and food bills. She collected her money at the Post Office. She expressed a desire to return to

Jamaica. She requested that he accompanied her to her bank in Croyden to close her account which contained only £25.00. He had to purchase her return ticket to Jamaica.

On or about August 26, 1996 Miss Campbell and himself (as nominees) between **Building Societies Development Limited** and the **Ministry of Housing** entered into an agreement to purchase Lot 182-A2 Succaba Pen, Old Harbour, St. Catherine. At the time the Defendant signed as Mrs. Deans.

The cost of the lot was \$225,000.00 and in August 1996 he gave Miss Campbell \$33,000.00 to deposit on the said property. She paid \$20,000.00. She never paid the rest or told him what had happened to it. Since separating he made checks with the Ministry and found out that she had paid a further \$5,000.00. He regarded this sum as part of the sum of \$33,000.00.

The cost of building the four bedrooms house was £33,000.00 and was paid for by him from his life savings. Miss Campbell contributed nothing towards the house because she had no money.

In order to support this venture he sold his house in the United Kingdom whilst construction of the house was going on in Jamaica. Most of the money was sent to the Defendant by way of International money order and traveller's cheque from time to time. He would also take money in the form of traveller's cheque and as they did not have an account together she would take the cheques to the bank and change them.

In 1994 up to the day of the wedding he was engaged in construction on the site. He engaged the services of workmen, Gerald the bricklayer, Ruebal the Carpenter, Mr. Goulborne was the electrician and Earl did the wiring.

He paid for material purchased at Old Harbour Glades & Hardware Supplies, Glendon Court Hardware & Agricultural Supplies, Jones Hardware and Farm Supplies, Midway Grain Store and Hardware, Old Harbour St. Catherine

The house was completed in 1996 and Miss Campbell, her four children and himself lived there. He was travelling back and forth from London to Jamaica. He had plans to return to Jamaica permanently so he shipped a 40 foot container with two vehicles, his personal effects and fixtures for the completion of the house. Some of the items shipped included bathroom fixtures, pieces of hardboard for the ceiling, ten doors with locks and hinges, eleven single windows, two double windows, household appliances, furniture and generator.

On or about July 20, 1997 he removed permanently from the home to live with his daughter in London as Miss Campbell became belligerent and threatened him so that he feared for his life. After he removed from the home he discovered that Miss Campbell was married at the time of her marriage to him.

He has been excluded from the premises and has not enjoyed its use and benefit.

Miss Campbell did not pay for the material from her own resources. He was the person working in England and sending money to pay the workmen and paying her airfare as well. She did not work whilst they were together and had no savings to speak of. He was not aware that Miss Campbell was married if he had known he would not have married to her.

Exhibit '1', the marriage certificate described her as a spinster. He had no reason to doubt her status at the time. Exhibit '2' is the document indicating the agreement that he

entered into with the Ministry of Housing and Miss Campbell signed this document with him.

He cannot say that she found the land in 1991 but she was the one who told him about it in 1993 and as far as he was aware she had not purchased the property. It was captured land belonging to the Housing Department. They did not build on it without the proper document and based on what he learnt from the Housing Department in 1994 he decided that he would build on it.

The Ministry sent two men who gave him instructions as to what to do. He started cleaning up the land. Miss Campbell did not pay a tractor \$3,500.00 to clean up the place neither did she pay \$4,500.00 to fence up the place.

Miss Campbell did not pay \$270,000.00 to workers. He does not know about her paying \$350,000.00 to complete the work. He took the building from foundation to belt-course. (Tendered and admitted in evidence as exhibit '3' were bank statements, exhibits 5, 6, 7 tendered as money order receipts)

In Cross-examination

He testified that he met Miss Campbell in 1993. She told him that she was in England ten (10) years. He did not understand that she had just come to England. His impression when he met her was that she was broke and had nothing.

He did not know that she had worked at 6 different jobs. When he met her she was on welfare. She was not on unemployment benefit. There is a difference. For welfare one goes to the post office. For unemployment benefits one goes to the labour exchange. She told him that she had not worked for the pass five (5) years. She was broke and had to go to the Post Office for money.

He paid for her eleven (11) year old son to visit Jamaica. They visited Jamaica in 1993 and they stayed at her grandmother's house. Miss Campbell indicated that she would like to build on the land. She got the land from the men who captured it. When he visited the land it had on a strand of barb wire. It was not fenced and it was unoccupied. In his estimation Miss Campbell was trying to take possession of the land before she took him there.

In 1996 they signed the agreement, at this time the house was already built.

They signed the agreement at the Ministry of Housing, Hagley Park Road and this he maintained was in the presence of Mr. Harris. They did not pay a deposit. He was responsible for digging the foundation and buying steel.

The value of the land was \$250,000. He does not know if any sum other than the \$33,000.00 was paid. Miss Campbell paid \$20,000 as deposit and informed him that she spent \$13,000.00. He went to the Ministry of Housing to verify the deposit and this was before windows and roof were put in. He was given permission to continue the building. He still has not paid the balance. Miss Campbell later paid \$5,000 leaving a balance of \$18,000.

This house was constructed from his life savings. It is a false situation if Miss Campbell produced receipt to the sum of \$390,000. Miss Campbell had no financing hence she could not expend her money in the construction of the house.

The money order in the sum of £500.00 (exhibit '4') sent in 1995 was to work on the house it came from his earnings, blood, sweat and tears. He sold the house in England in 1996 for the sum of £127,000.00 most of the fund was transmitted to Miss Campbell.

He gave a portion of the money to his two children. Half of the money from the sale of the house was given to his two children and less than half to the Old Harbour house. The house in England was sold in 1996. At that time most of the Old Harbour house was completed and Miss Campbell and her four children lived in the house.

He denied that in 1996 there was very little to be done on the Old Harbour house.

He sent some of the money from the sale of the London house to Miss Campbell and he took down some of the money. He sent money to one BA who was working on the house and to Mr. Clement Henry through Miss Campbell. He knows nothing of Miss Campbell's receipts amounting to \$350,000.

He commenced the construction of the house. Miss Campbell would be in charge of what was left to be done. Fitting the grill, putting on the awning, doing the rendering and cutting the roof on. Both of them were part owners of the land, signed the papers together. Her supervisory activities were supposed to be in it. It was a joint activity between them with his money.

He does not own other properties in Jamaica. He does not know about Miss Campbell and himself signing a document for \$620,000 for a vehicle.

The contribution that she has made is through his finance therefore at the end of the day Miss Campbell might be entitled to something.

In Re-examination

He testified that before he sold the London house in 1996 he had transmitted funds to Miss Campbell. The source of this fund was working in London in the building trade.

Miss Delores Campbell's Account

The Defendant Miss Delores Campbell testifies that she migrated to England in 1980. She lived at 4B Terbridge Road for a short while and then to Marvin Road Brixton. From 1981 – 1986 she worked in a private home for foster children. She then moved on to Birdhurst Nursing Home where she worked from 1986 - 1990. She then obtained a job as a cook where she worked for approximately 1 year and six (6) months.

In June 1991 she returned to Jamaica for 6 months when she learnt of the sale of a piece of land in Contention. The Ministry sent an agent to survey the piece of land after which she paid \$25,000. Her intention was to build her dream house.

She paid a tractor \$3,500 to clear the land. She fenced it at a cost of \$4,500. In 1991 she returned to England and in early 1992 she worked at Cornfield Bakery for approximately 18 months. She worked at Lyn's Hairdressing from 1994 – 1995. For a year and a half she worked 4 jobs daily to secure sufficient money to start and complete this house of her dreams in Jamaica.

She met Mr. Dean in August 1994 a relationship developed between them and he hastily convinced her to marry him. He knowing full well that her divorce was not finalized. In February 1994 they got married in Jamaica returning to England shortly thereafter. They never lived together in Jamaica as man and wife for any time.

She hired Mr. Clement Henry and a crew of 8 labourers to dig the foundation. She bought material amounting in value to \$503,331 and paid to the contractor Mr. Clement Henry a total of \$270,000 for his labour. She had to borrow \$350,000 from Mr. O'Sullivan to help with the expenses after Mr. Dean returned to England. Mr. Dean does

not know anything about the building of the structure or the land as he was not in Jamaica. None of the receipts, for the building material used, has his name on it.

In 1996 when Mr. Dean returned to Jamaica he was surprised to see the progress of the house but because they were married he did sign the agreement with the Ministry of Housing concerning the land.

The \$25,000 down payment on the land was from her funds and the £500.00 money order was not a contribution to the building of the house but was money sent to pay his attorney's costs in the purchase of land in Albion Estate, St. Thomas.

Mr. Dean returned to England in 1997. The house was still unfinished. His only contribution to the house was one (1) hack saw blade and 2lbs of 3" nails. Due to the fact that their relationship ended and he was bitter, he brought the case of bigamy against her and he is claiming ownership of her house as a matter of spite. Before their final break up and his departure back to England she loaned him half of \$620,000 to buy a coaster bus as well as \$115,000 loaned to him in May 27, 1997 to buy a Leyland minibus. These sums are still owing.

She testifies that it was in 1984 that she learnt that land was to be sold by the government. She went to the Ministry of Housing. She was given clearance to fence the land. Four years later she met Mr. Dean in England and told him about the land. Mr. Dean travelled to a function in Jamaica sometime later and she reminded him to visit the land. About two years later they both travelled to Jamaica.

She went to the piece of land and got a tractor to push off the land. She got men to dig the foundation. Mr. Dean left for England after the foundation was dug. She remained in Jamaica, buying material to construct the foundation. After the building went up to

window height, Mr. Dean returned to Jamaica and took the house to Belt course. They both returned to England.

She tendered into evidence receipts as exhibit '11'. This consist of a number of receipts from Old Harbour Glass, Glendon Court Hardware, KIG Trading).

She also paid a worker Mr. Campbell some money.

In 1996 Mr. Dean returned to Jamaica, at this time the house was finished and she lived in it. She met a Mr. Harris at Cross Roads and signed the agreement and handed it back to him.

The deposit of \$20,000 that she paid was money that she had taken from London. Mr. Dean did not give money. She has been paying for the land, a balance is owing.

At the time she got married to Mr. Dean she did not know that she was still married.

Mr. Dean sent a 40 foot container from his house in England. A truck and van came out of it. He brought some old pipe fitting that he had thrown down in England. There was a stove and a fridge. He did not take anything from his house in England.

In Cross-Examination

She testified that she migrated to England in 1980. Whilst there she lived at a number of places. She started working in 1986 for about 1 year and 6 months. She did not work at any place before. She did not go into the Birdhurst Nursing Home job directly from the previous job. She stayed at home for 3 – 4 months. She stayed at Birdhurst for a year and four months. The building burnt down. She was unemployed. She had to find something to do. She worked at a bakery for one (1) year and six (6) months as a cashier. During this period she lived at various address. She lived with her brother, then with her

uncle's wife and then in her own rented apartment until she got a house from the Council. She then went to live with Mr. Dean.

She did not break her employment whilst working at any of these jobs. She did not visit Jamaica. She worked continuously to get money to build her dream house in Jamaica.

In 1993 she travelled to Jamaica with Mr. Dean. When exhibit '2' (the certificate of her marriage to Mr. Dean) was shown to her she testifies that she did not know what "spinster" means and she did not tell the minister that her divorce was not finalized. She had returned to Jamaica and spent 18 years when she met her husband, Mr. Codner. She was born in 1960 and was married to him when she was 24 years old.

Exhibit '12' (the certificate of marriage to Mr. Codner) indicates that she was married May 19, 1984. She testified that when she was not working she returned to Jamaica. Most of her working days were in the 1990's. She worked for more days in the 1980's than in the 1990's and denied that for about 5 years she was unemployed in Jamaica.

She testified that she had made a report to the Old Harbour police in respect of a passport issued in 1993 that was missing for ten years. This passport was finished so she did not take it to court.

She denied that when she met Mr. Dean she was receiving welfare. She admits to receiving unemployment benefits and child support. She denied that she live with family for most of the time that she lived in England.

She returned to Jamaica in 1996 and did not work whilst in Jamaica.

She knows no place of business as Lyn's Hardware as indicated on exhibit '2' (the agreement).

She can't recall if travel arrangements were made in relation to Ash World Wide travel.

Whilst Mr. Dean and herself were apart she never contacted him by telephone. Mr. Dean would correspond with her and she would receive messages from him. She denied writing to Mr. Dean about payments for a workman BA and that Mr. Dean sent money from England.

She denied that she signed at page 8 of her defence. It is not her signature. She did not list all of her income in her list of documents as to her source to buy material.

She has been paying for the land. She has receipts but she does not see these receipts on her list of documents.

The container contained doors, double glass windows, kitchen unit, counter top, 8 seater dining table, bed head and bottom among other things.

She denied that he sent money to her through traveller's cheque and through International money order.

She agreed that Mr. Dean played an important role in the house but not as important as hers. She agreed that she did not start building on the land before she met Mr. Dean and she had no written agreement relating to land before she met Mr. Dean.

She testified that Mr. Dean is being spiteful. He did not finance the construction of the house. She did not use Mr. Dean to realize her dream of acquiring the piece of property and constructing a house. She denied that Mr. Dean used his savings from his years of working in England in the construction of the house.

She did not receive \$33,000 out of which she paid the deposit. She cannot recall writing to Mr. Dean to indicate when money was owing to workers as BA.

She did not deceive him by leading him to believe that she was free to marry. She denied that she moved herself and four children into the house and pushed out Mr. Dean.

Inconsistencies on the Evidence

On Mr. John Dean's Evidence

At first he testified that the costs of building the house came from his life savings. He then testified that a part was from the sale of the house in London.

Initially he stated that most of the funds from the sale of the house was sent to Miss Campbell. He then testified that half of the money from the sale of the house was given to his children and less than half to the Old Harbour house.

He testified that the Defendant contributed nothing towards the house because she had no money. He then went on to say that he does not know if any money has been paid other than what he gave her that is the down payment of \$30,000. He does not know if full payment has been made for the land. He then went on to say that in relation to the receipts amounting to \$390,000 exhibited, by Miss Campbell these receipts could relate to purchase of material for the house. However it would surprise him that she could have expended that amount.

He testified that it was in December 1993 that he went on the land for the first time he then went on to say he does not know if it is the first time.

He testified that when he is home in Jamaica work goes on when he returns to England work ceased. His evidence also is that whilst he is in England he had to send money for work done and not paid for. He had to send money to BA to do the roof and the rendering. Miss Campbell got BA to do this work. At first he testified that he sent to Miss Campbell a deposit of \$30,000. He later changed this amount \$33,000. The house in England was sold in 1996. The house in Old Harbour was completed in 1996.

On Miss Campbell's Evidence

In one instance Miss Campbell testified that Mr. Dean did not send anything from his house in England in the 40 foot container. In the container were a truck and a van and some old pipe fittings that he had thrown down.

She then testified that although there was no washing machine, a table that could seat eight persons, the head and bottom of a bed, doors, eleven double glazed windows, a kitchen unit, counter top, a generator and a sewing machine were in the container.

In examination-in-chief she testified that in 1981 – 1986 she worked in a foster home for children, in cross examination she testified that she started working in 1986. She did not work at any place before.

She testified that whilst working at the various jobs that she undertook in England she did not break her employment and she did not visit Jamaica. She then said it is her evidence now that she was not working so she returned to Jamaica.

In examination in chief she testified that she travelled to Jamaica in 1994 with Mr. Dean. In cross examination she said it was not correct to say that she travelled in 1994. It was in 1993 that she travelled with him.

She testified that she had spent 18 years of her life in Jamaica when she met Mr. Codner. She had left England and returned to Jamaica. Her evidence is that she was born in 1960. She got married when she was 24 years old. It stands to reason then that she would have been married in 1984. Her evidence is that she went to England as an adult for the first time in 1980. Her evidence in chief states that she was in England at the time. Exhibit '12' indicating her marriage to Mr. Codner shows that she was 23 years old at the time of the marriage.

The submissions on behalf of the Claimant

In essence learned counsel on behalf of the Claimant submits that this case must entirely be determined on credibility. The court should accept that the Defendant perpetrated a deception on the Claimant. The deception had a single goal: to acquire her “dream house”. She conducted herself in such a way that the Claimant and the marriage officer were convinced that she was a single woman who had no impediment to freely marry the Claimant. Further, based on her response in cross-examination the Defendant clearly understands that her divorce was not finalized. The process was part and parcel of getting the Claimant to commit his resources to acquiring the land and building the house on it.

The court is requested to accept that the Defendant had a motive for committing bigamy and the account of the Claimant of how he learnt of the true situation, his surprise and the steps he took thereafter and reject the suggestion that he has acted out of malice and spite. On the issue of how the land was purchased the court is asked to separate the two issues: How the land was introduced to the parties and how the purchase of the land and the construction of the house were financed. Based on the evidence it seems clear that the property was identified by the Defendant as somewhere she would want to acquire someday and there is even the evidence that she asked someone to run a fence of some sort to establish that she was making a claim. It is not in dispute that nothing further happened in respect of the land until the Claimant entered the picture.

The court is asked to accept the Claimant’s evidence that both parties went to the Ministry of Housing in January 1994 and based on that visit he was able to commence construction.

On the issue of the deposit it is proposed that the Claimant's evidence that he gave the Defendant \$33,000 be accepted and that this amount was intended to go entirely to the price for the land and that the Defendant paid over the sum of \$20,000 and spent the balance on herself.

It is further submitted that in relation to the financing of the construction the only credible evidence before the court on the issue is the Claimant's testimony.

In this case the court must take the parties as they are and the circumstances that they described relating to their working and living conditions. The Claimant spoke to his blood, sweat and tears working in England. There was no suggestion that he lived under any condition where his earnings were strained or non-existent. In fact he owned a house in England. In 1994 he was 68 years old and accumulated his savings.

The Defendant was unemployed for an extended period of time and as she indicated she worked more years in the 1990's than the 1980s. Her evidence as to her employment in the 1980s is contradictory as her witness statement states that she worked at a children's home from 1981 – 1986 whereas her evidence in cross examination was that she worked at that job 1 ½ years. In cross examination she said that she was in Jamaica in 1984 her witness statement said she was in England.

The court it was submitted can get a full sense of the tenuous employment that the Defendant had in the much shorter period of time she lived in England by looking at her arrangements for accommodation. At one time or the other she lived with her father or her brother or her uncle's wife. When she lived on her own she occupied a room in a house. She had four children about in the 1980s. She received unemployment benefit or welfare as the Claimant suggested.

The Defendant it is respectfully submitted is unlikely to be a person of means while, it is submitted, that persons without means may find access to formal or informal source of funding, the Defendant has not identified any other potential source of income or funding except what she claimed to be her savings from the jobs she worked in England. That seems to be an unlikely proposition.

It is further submitted that on a balance of probability the Claimant has ample means. The court is asked to accept the Claimant's testimony that the Defendant had no savings to speak of and the Claimant funded the purchase and construction of the house and he paid her plane fare to and from England. Further in matters such as these the court must therefore look at the evidence in total not merely which party has produced receipts or the most receipts for the payment of materials or supplies.

Indeed the more receipts produced by the Defendant the more her case cries out for explanation as to her source of money used for the payment.

As it relates to the Claimant, he has disclosed his Halifax Building Society Bank book.

It shows that significant sums were withdrawn between 1995 and early 1996 not coincidentally the majority of receipts provided by the Defendant as exhibit '11' covers the period 1995 -- 1996

The Claimant sold his house during that period. The Defendant's evidence in contrast lacks any specific as to her savings or other income.

The issue of the Defendant's credibility should be looked at as it relates to the times she said she was in England and in particular when she said she met Mr. Codner in 1984 (in Jamaica) as well as the places that she said she worked at. In examination in chief she

said she worked at the children's house from 1981 – 1986 in cross examination she said it was for 1 ½ years.

Her credibility is strained when she claims she is unable to recall receiving money from the Claimant for construction. Credibility was again at the heart of her initial response to the contents of the 40 foot container shipped by the claimant. She said the only thing in the 40 foot container that was used to complete the house was some old pipes that the Claimant had thrown down. In cross examination she admitted that the Claimant also furnished doors and windows and kitchen cupboards. Further in examination-in-chief she states that the Claimant “knows nothing about the building of the structure on my land as he was not in Jamaica at the time.” In her oral evidence she testified to her counsel that he took the house from window height to belt course.

In the absence of direct financial contribution the Defendant is only entitled to 20% interest.

In relation to the Law

Reference was made to Section 68 of the Registration of Titles Act and the court is reminded that in the present case the parties are not yet registered on the Certificate of Title.

Citing **Bull vs Bull (1955) 1AER 253 at page 253**, learned counsel proposes that where more than one (1) person is registered on a Certificate of Title as tenants in common they each hold a legal interest in the property in distinct through undivided shares, the share of each being in proportion to his or her contribution.

Further the decided cases involving property disputes between legal owners show that the court in determining the respective shares of each Claimant considers the following:

(1) any express agreement between the parties as to their respective shares.

(2) In the absence of an express agreement aforesaid, the common intention of the parties at the time of acquisition of the property. This common intention is determined from the conduct and contribution of the parties.

Indicating that a similar decision was reached in the English decision of **Bernard vs Josephs (1982) 3AER 162**. The court was urged to have regard to the evidence of contribution and adjudge the circumstances under which both parties claim they make financial contributions.

Other cases cited were:

Midland Bank Plc v Cooke (1995) 4 AER page 262; Grant v Edwards (1986) 2AER page 426

The Defendant's Submission

On behalf of the Defendant in relation to the **undisputed facts** it was submitted that the Defendant has been in sole possession of the property since 1991, over 15 years, and by this fact alone she is entitled to ownership.

The Defendant first identified the land in 1991. The Claimant was not known to him at the time she got approval to purchase the land.

She surveyed and pegged the land, paid a deposit of \$25,000 with a balance of \$200,000 owing. She paid a tractor \$3,500 to clear the land and fenced it at a cost of \$4,500.

Between 1980 – 1993 she worked at several places in England with the sole intention of saving her money to build her house in Jamaica. Between 1981 – 1993 she worked at seven different establishments. The Claimant says he knows nothing of this early history.

From her savings from her jobs she gave evidence that she purchased material from Old Harbour Glades, dated receipts all in the name of Mrs. Delores Deans (after all adjustments are made to figure) amounts to \$400,000.

Her un-contradicted evidence is that she hired labourers to dig the foundation. Mr. Clement Henry as main builder and some eight workers.

In 1996 the house was completed and the Claimant stayed there briefly removing permanently in 1997.

Based on this, there is presently no legal owner of the said property. The Defendant is the equitable owner and she is most qualified to obtain a legal title to the land.

In relation to the **disputed facts** it is submitted that the agreement for sales is a bogus document. The Defendant testified that she did not give her place of address as “Lyns Hairdressing Salon Old Harbour Glades” furthermore by 1996 the Defendant was already in possession and ownership of the land.

In relation to the Claimant’s claim that it was he who hired the workers and that the cost of building was paid by him from the funds from the sale of his house in the UK and all building material and labour expenses were secured by him solely, it is submitted that no proof was offered as the expired bank book is no proof. Deloris Campbell has proved the extent of her own monetary contribution to the building and purchasing of the raw material. The house in England was sold in 1996 after the building of the house in Jamaica.

The Claimant offers no undisputable evidence of sending monies to the Defendant for the building or anything else. The £500.00 international money order was to pay an attorney to deal with the Claimant’s own business.

In conclusion it is submitted that the hard facts do not support the Claimant's case that he is entitled to 100% of the legal and beneficial interest in both the land and furniture and also entitled to possession.

There is presently no legal owner of the said property. The Defendant has proven that she is the equitable owner and as such she is the one most qualified to obtain a legal title to the land.

I find that the following Areas are not in Issue

1. That both parties based on exhibit '2' (the agreement) are nominees in an agreement between themselves and the **Building Societies Development Ltd** and the **Ministry of Housing**. This agreement is dated August 26, 1996.
2. A deposit of about \$20,000 has been paid in relation to the land, leaving a balance of \$200,000 owing. The Ministry of Housing therefore still has an interest in the property.
3. The parties met in 1993 and within the same year travelled to Jamaica and visited the land in question
4. After a visit to the Ministry of Housing construction of the house commenced on the land.
5. The parties entered into a form of marriage on February 10 1994. At that time Miss Campbell could not have legally entered into a marriage as she had not yet obtained a decree absolute in relation to a previous marriage.
6. The parties did not live together for a long period, as in 1997 Mr. Dean ceased living in this house permanently.

7. Mr. Dean shipped a 40 foot container containing material to be used in the construction of the house and motor-vehicles.
8. Based on the evidence the motor vehicles are not a part of this claim. Neither is Mr. Dean “looking back towards anything in the house”.
9. Both parties are part owner of the land subject to the interest of the Ministry of Housing. Mr. Dean’s testimony is that they signed the papers together and the supervisory activities of Miss Campbell are to be taken into account as it was actively between them with his money. The contribution that she has made is through his finance therefore at the end of the day Miss Campbell might be entitled to something.

The main areas I find in Issue are:

- (1) The parties’ respective contribution to the deposit on the land on which the house is constructed.
- (2) The parties respective contribution to the construction of the house.
- (3) The respective interest of the parties in the land and the building.

Finding of Facts

I find as a fact that the parties met in England in 1993 and later travelled to Jamaica and visited the land in question. This is not in issue.

I find as a fact that the parties visited the Ministry of Housing and commenced construction thereafter.

I accept Mr. Dean’s evidence when he testified that he was employed in England as a builder and has been so employed for a number of years.

I accept his evidence when he testified that he owned a house in England and that this house was sold in 1996. I find as a fact that based on the employment history of both parties Mr. Dean's pattern of employment seems to be consistent whilst that of Miss Campbell seems to be sporadic.

On a balance of probability based on the employment pattern of both parties I find that it is more likely that Mr. Dean was the one who sent the money for the deposit on the land and reject Miss Campbell's evidence when she denied this.

It is Miss Campbell's testimony that she received unemployment benefits and child support whilst in England and I find that this buttresses her unemployment record as outlined by Mr. Dean. I therefore reject her evidence that the amount of \$503,331.00 spent by her at various places to purchase material in relation to the construction of the house was her money and find this sum may well have been money sent to her by Mr. Dean if indeed she had spent this money at all. I find her evidence in this respect unreliable and she has not satisfied the court on a balance of probabilities that she had the wherewithal to realize what I consider to be a substantial sum.

I find that on the evidence she was not earning enough or receiving enough to realize this substantial amount of \$503,331.00.

I find as a fact that based on her evidence in cross examination her employment between 1980 – 1992 seemed to be for a period of 4 years and 3 months and she seemed to have worked more days in the 1980's than in the 1990's.

I find that despite the fact that the Claimant sold his London house in 1996 a portion of the money from the sale of this house could have been used in the construction of the Old Harbour house as the construction of this house was not completed until 1996. It is Mr.

Dean's evidence which I accept that the house in England was sold whilst the construction of the Old Harbour house was still going on.

I find that Miss Campbell's inability to recall sums of £500.00 and £200.00 means that she is not being forthright with the court and this is supported by her testimony that she does not know what the word 'spinster' in the marriage certificate exhibit '2' in relation to her marriage to Mr. Deans means. I find as a fact that Miss Campbell knew that she was not divorced at the time of her marriage to Mr. Dean. I reject her evidence in this respect when she testified otherwise.

It seems to me that Miss Campbell in order to construct her dream house went out and found a man almost twice her age who would make her dream a reality even if it means entering into a marriage with that man whilst still not divorced and lying to him about her age.

I appreciate that there are contradictions on the evidence on both sides but on a balance of probability I find that the evidence of Mr. Dean is more cogent.

I am afraid that I can not agree with the Defendant's submission that Miss Campbell's evidence that she hired the labourers to dig the foundation as well as the main builder along with some eight workers as uncontroverted.

Further I can not agree that since someone was in possession in 1996 an agreement for sale could not have been signed on August 26, 1996.

The Applicable Law

Bromley's Family Law 10th Edition pages 149 – 150

The family home may have two functions. Its primary purpose reflected in this interpretation of the European Convention is to provide shelter for the parties and their family. At the same time if it is held in free hold on long lease it will constitute the most

significant asset that most couples own and is thus an extremely valuable investment. A party deprived of both the value of the home and the right to occupy it will often find it impossible to purchase other accommodation and if the house is sold and the proceeds divided between them both may face the same predicament.

Bull vs Bull 1955 1AER page 253

Held:

As the effect of the purchase of the time in 1949 was that the plaintiff and the Defendant became beneficial tenants in common of the proceeds of sale of the property which was subjected to the statutory trust for sale, the Defendant had a right to participate in the enjoyment of the property until it was sold and the plaintiff's action for possession failed.

Bernard vs Josephs 1982 3AER page 162 Held:

- (2) Where there was no express declaration of trust there was no presumption that the parties would always take equal shares: instead their respective share were to be ascertained according to the circumstances and the parties respective contributions to the purchase and joint finances of the home either (per Lord Denning MR and Kerr L.J.) by adding up the contributions in cash, in kind or in services of each party up to the time of separation and even where necessary having regard to post separation events or (per Griffiths L.J.) by determining the intention of the parties at the time of the purchase regarding their respective beneficial interest as evidenced of their respective contributions both at the time of purchase and subsequently.

Midland Bank plc vs Cooke and another (1995) 4AER page 562 held:

Where a partner in a matrimonial home without legal title had established an equitable interest through direct contribution, the court would assess (in the absence of express evidence of intention) the proportions the parties were to be assumed to have intended for their beneficial ownership by undertaking a survey of the whole course of dealing between the parties relevant to their ownership and occupation of the property and their sharing of its burdens and advantages and would take into consideration all conduct which threw light on the question what shares were intended. In particular the court was not bound to deal with the matter on the strict basis of trust resulting from the cash contribution to the purchase price, and was free to attribute to the parties an intention to share the beneficial

interest in some different proportions and the fact that the parties had neither discussed nor intended any agreement as to the proportions of their beneficial interest did not preclude the court from inferring one on general equitable principles.

Grant vs Edwards & Another 1986 2 AER page 426 and 427

Held: ---once it has been established that the claimant was entitled to a beneficial interest in the property the quantification of that right depended on the direct and indirect contributions made by the parties to the cost of acquiring the property.

The Application of the Law to the Finding of Facts

In this situation what do we have? The parties' fall out. They go their own separate ways. One leaves the house the other stays behind in it. There is no need to divorce as they were not married. They just separate.

The nature of the relationship between the parties is a very important factor when considering what inference to be drawn from the way they have conducted their affairs.

On the agreement to nominate purchaser the parties are listed as tenants in common. Mr. Dean's testimony is that they signed the agreement together and Miss Campbell's supervising activities are to be taken into consideration. It is actively between them with his money. Miss Campbell found the land and whilst Mr. Dean travelled to and from England she remained in Jamaica supervising the activities. I hold therefore that this demonstrates that they should both have a beneficial interest in the house and the land. Having established that Miss Campbell is entitled to a beneficial interest in the property then the quantification of that right depends on the direct and indirect contributions made by the parties to the costs of acquiring the premises. Further their respective shares are to be ascertained according to the circumstances and the parties' respective contribution to

the purchase and joint finances of the house either by adding up the contributions in cash or kind or in service of each party.

Further as Kerr L.J. points out in **Bernard vs Josephs** at page 173

If the parties contributions towards the acquisition of the house had been substantially unequal, then this would no doubt have been reflected in their respective shares in equity, since the absence of any express declaration of trust as to their respective shares would permit this result.

Having accepted Mr. Deans' testimony that he was the one in constant employment and that he provided the money for the down payment, that he sent money to pay the workmen, as well as to purchase material as also shipping construction material in the 40 foot container and taking into consideration Miss Campbell's history of sporadic employment I find that Mr. Dean's contribution is greater and therefore find that in all the circumstances Mr. Dean's contribution would amount to 70% whilst Miss Campbell's would amount to 30% and the equitable interest is thus apportioned and this is based on what I find to be the parties contribution to the costs of acquiring the property (**Grant vs. Edwards**)

The house is one for them both and Mr. Dean in the circumstances cannot turn Miss Campbell out of the house at this time. He is not entitled to sole possession. Each of them is entitled to possession of the premises and its use and occupation of it in a proper manner. As tenants in common each is entitled to an undivided share in the house. The share of either being in proportion to his or her contribution. As Denning L.J. points out in **Bull vs Bull** at page 254:

My conclusion, therefore, is that when there are two equitable tenants in common, then, until the property is sold, each of them is entitled currently with the other to the possession of the land and to

the use and enjoyment of it in a proper manner; and that neither of them is entitled to evict the other.

Conclusion

The evidence is that a balance of \$200,000 is owing to the Ministry of Housing. This money is an encumbrance on the property under an agreement. Therefore any order made by the court should be subjected to the Ministry of Housing's interest.

Mr. Dean cannot turn Miss Campbell out of the premises. She has an interest which entitles her to remain in the house which she has lived in until the house is sold. The interest of the Ministry of Housing has to be dealt with and the balance of the proceeds divided between them in the proportion of 70% to Mr. Dean and 30% to Miss Campbell but Mr. Dean cannot turn Miss Campbell out into the street.

This does not preclude the parties from purchasing the interest of either after dealing with the rights of the Ministry of Housing.

If the house must be sold it must be sold with vacant possession unless either party consents.

Order

1. That the Claimant and the Defendant are entitled to 70% and 30% respectively of the interest in the land and the house.
2. That the property be valued by a valuator agreed on by both parties and if no agreement the valuator be appointed by the Registrar of the Supreme Court.
3. That the property be sold
4. That the net proceeds of the sale be divided according to each party's beneficial interest and after the payment of all sums due to the Ministry of Housing for the purchase of the property.

5. The Registrar of the Supreme Court be empowered to execute all documents necessary to effect the Registration and or transfer of title and any other document to give effect to the orders of the Supreme Court.
6. Liberty to apply to either party
7. Costs of claim to the Claimant to be agreed or taxed.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized, somewhat abstract shape.