

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1998/H037

BETWEEN VANROY HUNTER PLAINTIFF
AND OLIVE CARTER DEFENDANT

Dr. Adolph Edwards for the Plaintiff

Mr. K. Williams instructed by Houghton & Associates for the Defendant

Cons
Heard: June 8, & 9, 2000 ; January 29 & 31,
 February 1, ~~9~~ & 20, 2001

GLORIA SMITH, J.

The plaintiff Mr. Vanroy Hunter's Claim dated the 6th March 1998 is
against the defendant Olive Carter for:

1. A declaration that the plaintiff is the sole proprietor of the Legal
 And equitable estate in all that parcel of land situate at 19 Canal
 Drive, Hampton Green, Spanish Town, St. Catherine registered
 At Volume 982 Folio 409 of the Register Book of Titles.
2. An order that the defendant do deliver up possession of the said
 Land to the plaintiff.
3. An order that the defendant do deliver up to the plaintiff the
 Duplicate Certificate of Title for the said land Registered at

Volume 982 Folio 409 of the Register Book of Titles.

4. Alternatively, an order that the premises known as 19 Canal Drive, Hampton Green, Spanish Town in the parish Of St. Catherine registered at Volume 982 Folio 409 of the Register Book of Titles be sold and the entire proceeds of Sale be given to the plaintiff.
5. The net amounts of rental collected to date be given to the Plaintiff

The Defendant has Counter-claimed for:

1. A declaration that the plaintiff and the defendant are equitable tenants in common in equal shares of all that parcel of land situate at 19 Canal Drive, Hampton Green, Spanish Town in the parish of St. Catherine registered at Volume 982 Folio 409 in the Register Book of Titles.
2. A declaration that the plaintiff and the defendant hold the said property on trust for themselves in equal shares.
3. An order that the property be sold and the defendant be given the first option to purchase.
4. An order that the said property be valued by an independent valuator agreed between the parties or in the absence of such agreement by one appointed by the Registrar of the Supreme Court.
5. An order that the Registrar be empowered to sign any documents

of sale or transfer in the event the plaintiff fails or is otherwise unable to do so.

By an Agreement for Sale dated the 7th day of December 1989 the parties agreed to purchase premises known as 19 Canal Drive, Hampton Green, St. Catherine and both parties signed the agreement. Upon completion of the sale the property was registered in the joint names of the parties.

The plaintiff Mr. Hunter resides in London, England and the defendant resides at the property in issue. There was an understanding that whenever the plaintiff visited Jamaica he would stay at the property with the defendant. There had been an intimate relationship between the parties which ended in or about December 1995.

The plaintiff seeks to have the determination of the question of his rights in the beneficial interest of the property.

The plaintiff contends that he owns the property solely, legally and beneficially and that he alone contributed to the purchase of it.

On the other hand, the defendant is saying that the parties should share equally in the beneficial interest in the property as the purchase of the property was a joint effort on the part of both parties and she is therefore entitled to one half share of the property.

The plaintiff's evidence is that he met the defendant in February 1986, while he was visiting the island. He was living in England since 1960, was married and visited the island occasionally on vacation.

When he met the defendant she was then residing at her mother's house in Linstead St. Catherine and she had a daughter Pauline Thackur.

The relationship between the parties blossomed and matured into an intimate relationship during his visit and he returned to England during the said February of 1986. After his return to England the parties corresponded and in July 1988 the plaintiff provided tickets for the defendant and her daughter to visit him in England. Mr. Hunter made arrangements for them to reside with his cousin while they were in England. They remained there from July 1988 to January 1989.

In September 1988 Hurricane Gilbert devastated Jamaica as a result the defendant's mother's house was extensively damaged. On her return to Jamaica in January 1989 she could not stay at her mother's house consequently she had to move in with some other relatives. This was short lived as the defendant and her relatives did not get along well, she therefore found alternative accommodations to rent.

Another dispute arose between the defendant and the persons with whom she was sharing the rented accommodations and once again she was forced to remove to reside with relatives in Spanish Town.

Sometime after the defendant informed the plaintiff that she would have to find a place to buy because herself and her relatives had an argument and she needed somewhere to live – She indicated to him that her mother might sell a piece of land to assist her, so she was looking for a place to buy.

The plaintiff then told her to go ahead and look a place to buy which was not too expensive.

The defendant subsequently contacted the plaintiff and informed him that she found a house consisting of 5 bedrooms, 3 bathrooms and 2 kitchens for \$380,000.00. When the plaintiff enquired why such a big place, the defendant reminded him that there were a lot of them, since she had responsibility for her deceased sister's children as well as her daughter.

Plaintiff then agreed to purchase the premises for \$380,000.00. At that time he had \$200,000.00 in the Bank of Nova Scotia, Duke Street, Kingston, that sum was used to pay the deposit to Mr. Smart Bryan, Attorney-at-Law who had the Carriage of Sale on the property (See Exhibits 4 & 5).

Plaintiff gave evidence that he had hoped to obtain the balance of the purchase price of \$180,000.00 by way of a mortgage from Victoria Mutual Building Society in London. He applied for the mortgage loan but before it was approved, one of the Vendors Mr. Flynn telephoned the plaintiff in England, indicating to him that he could not wait any longer on the balance of the purchase price as he required it then. The purchase price was also increased by an additional \$15,000.00 making the final purchase price \$395,000.00

Without awaiting the approval of the mortgage from Victoria Mutual Building Society London, Mr. Hunter arranged and sent the balance of the purchase price to Mr. Flynn in the United States of America. Firstly on the 12th September 1989, Barclays Bank, Brixton by means of a Telegraphic Transfer order sent US\$30,000.00 to Mr. Flynn (at an agreed rate of exchange J\$5.50 to

US\$1) (See Exhibit 6) J\$165,000.00. Secondly, on 29th September, 1989 by means of Telegraphic Transfer for £3,550 (Sterling) was again sent to Mr. Flynn (at an agreed rate of exchange of J\$9.30 to £1 Sterling) J\$33,000.00 see "Exhibit 7".

By these three transactions the plaintiff had paid a total of \$398,00.00 – (Documentary Proof was furnished by the plaintiff in respect of these.)

The plaintiff also told the Court of an arrangement between his cousin in England and the proprietor of La Roose Restaurant "Ever" where the defendant was instructed to collect \$10,000.00 from "Ever" on behalf of his cousin.

After the vendor of the property increased the purchase price, the plaintiff instructed Miss Carter to pay over this amount to Mr. Smart Bryan to help cover the additional amount. Mr. Hunter contends that not only did he pay the purchase price but also the costs incidental thereto for Stamp duty etc.

The defendant on the other hand is contending that she is entitled to one half share of the property at 19 Canal Drive, Hampton Green on the basis of her contributions towards the acquisition of the said property and further her contributions to the development and improvement of the property by virtue of the fact that it was the intention of both parties and especially the plaintiff that Miss Carter was to have half share of the property.

The defendant further contends that there was an express intention or alternatively an inferred intention on the part of the plaintiff that the defendant was to have one half share and interest in the property – this is evidenced by the fact that the plaintiff and defendant signed the Agreement for Sale, the

Instrument of Transfer and all other documents necessary to convey title to the parties joint names.

She first gave evidence that she was involved in an intimate relationship with the plaintiff for over 30 years, having met the plaintiff in 1968, during which time they agreed to purchase in their joint names and in equal shares the property at 19 Canal Drive. She said while she lived and worked in England she gave a substantial part of her earnings to the plaintiff, to save for her – She earned between £200 - £250 per week.

After Hurricane Gilbert in 1988 when the defendant's mother's house was destroyed it was agreed that the property should be purchased for the defendant to reside in on her return to Jamaica. The defendant contended that she had provided the deposit of \$200,000.00 from her savings account at Bank of Nova Scotia, Linstead in which she had \$300,000.00. This money she had saved during the period she worked with the Public Works Department.

Later on in her evidence she stated that it was agreed that it was Mr. Hunter who should make the deposit. This about turn came after her attention was drawn to the Telegraphic transfer from Mr. Hunter's account at Bank of Nova Scotia Duke Street of \$200,000.00 which was paid over to Mr. Smart Bryan for the deposit.

Again, Miss Carter contended that she paid \$13,000.00 to Mr. Bryan and exhibited a receipt dated 11th October, 1989 "Exhibit 16" as part of the purchase price, and that this was her money. However, when it was suggested to her that, that sum was made up of the money she collected from the proprietor of

La Roose Restaurant and the \$3000.00 that Mr. Hunter had paid over and above the purchase price – She did not deny this but said she could not recollect any such transaction.

This case was remarkable in many ways, at first the defendant asserted that she first met the plaintiff in 1968 and that they had an intimate relationship for 30 years. She stated that while in England she removed from her cousins house and went to live with the plaintiff and continued so to do until 1988.

At a later state she said she had gone to England in 1970. Still further on in her evidence she stated "I spent 3 years in England" while I was in England for 3 years Hurricane Gilbert hit Jamaica".

The only constant feature in this part of her evidence is that Miss Carter returned to Jamaica in January 1989.

The plaintiff Mr. Hunter has said that he has lived in England since 1960 and that has not been disputed. His visits to Jamaica have been occasional and were never for periods of more than 6 weeks, so if as Miss Carter contends she had lived with him for 30 years – then it meant that they would have lived those years together in England. In light of her evidence in that area it is difficult for me to determine what period she actually lived in England .

On a balance of probabilities I prefer and accept Mr. Hunter's evidence when he said that the defendant was in England from July 1988 to January 1989.

On the point of how much share each party would have in the property, this was hotly disputed.

In the case of Mr. Hunter, he said he bought the house as an investment and paid the entire purchase price with the intention that Miss Carter would live in it. He placed her name on the title, so that in the event of his death, since he was a married man, his family would not be able to interfere with her and she would not be left on the streets.

Miss Carter's contention at first was that the property was to be held in equal shares, later on however she stated that the plaintiff and herself had never discussed how much share each party would have had in the property. She also said that she did not think about whether or not any of them would have a greater share in the property, because "I loved him and I would not let him go and I am in the house."

Miss Carter gave evidence to the effect that she was the one who was responsible for the repairs, maintenance and upkeep of the property and financed these from her personal resources without any contribution from the plaintiff - However, the evidence again showed otherwise. Miss Carter herself admitted that on one of Mr. Hunter's visits he did substantial repairs to the roof and this was substantiated by documentary evidence submitted by the plaintiff to the extent of \$35,000.00. In addition the plaintiff stated he used to send £100 per month to help Miss Carter with the maintenance of the property. At first she admitted she used to get the £100 per month but she did not accept the suggestion that it was for maintenance of the property, but for her own use. Later she retracted from that position saying that "He did not send me money every month from December 1989 to December 1995 - He used to send me a

money every now and then for food. He would send me money about 2 times per year".

The question of Miss Carter's credibility is very germane to this case, in the absence of documentary evidence to substantiate most of what she has told this Court, heavy reliance will have to be placed on her oral evidence. The Court must therefore examine with great care Miss Carter's evidence in an effort to determine her credibility.

Miss Carter tried to establish that she lived with Mr. Hunter in England from 1968 – 1989. She further said that when she first met Mr. Hunter she had a daughter Pauline Thackur who was born in the Linstead Hospital and a Mr. Thackur was her father. She told us that in 1989 when she returned to Jamaica her daughter was still attending school, however she did not remember the date of birth of her only child, the year she was born, how old she (defendant) was when the child was born, how old the child was when she met the plaintiff or how old the child is now.

On the other hand Mr. Hunter says when he first met the defendant in 1986 her daughter was 15 – 16 years old which would substantiate the statement by Miss Carter that when she returned to Jamaica in January 1989 her daughter was still attending school.

This condition of total amnesia as to the age of the defendant's only child leaves this Court no choice but to approach her evidence with extreme caution.

There were other examples in her evidence when she said one thing at one stage and later on said something completely different.

On the question of her alleged contribution to the purchase price of the property, she was very "sketchy" and uncertain to say the least. For example she stated that while in England she worked and gave a "substantial part of her salary to the plaintiff to save". There was no evidence of how long she worked for and what sums she gave him to save. Further she never directly asserted that any such sums saved were applied to the purchase of the property by the plaintiff.

Secondly, she said she paid the deposit of \$200,000.00 out of her savings account at Bank of Nova Scotia Linstead which contained \$300,000.00, such sums she had saved while working at the Public Works Department – Her evidence is that she earned \$4000.00 per fortnight and that during that period she was responsible for her deceased sister's 8 children as well as her daughter. She said further that she had to seek assistance from Church Organizations in maintaining them. She admitted "I alone could not manage them – it was too much for me – My salary could not stretch. I sought the help of Church Organizations to assist me with the children."

How then in those circumstances was she able to save \$300,000.00 during this period "when her salary could not stretch."

It is my view that the defendant was not a truthful or credible witness and she sought to "stretch" the truth to try and support her case as pleaded. Unfortunately in my view she was unable to accomplish this – indeed whenever she was confronted by the conflicts in her evidence she resorted to uncontrollable bouts of crying, wailing and groanings in the Court. I did not

believe her version of the events as outlined and rejected her evidence in the areas where it conflicted with that of the plaintiff. The plaintiff on the other hand struck me as a very honest, frank and forthright person who was able to support his claim as to how the property was acquired and the manner in which the purchase price was paid by documentary evidence.

On the question of Improvements to the house Miss Carter told us of installing new kitchen cupboards at a cost of \$60,000.00 – no documentary evidence was provided in support of this expenditure. Furthermore no reasons were given why the cupboards were replaced. Was it a necessity or was it for aesthetic reasons?

- (2) Grilling (i.e. heightening of) the fence and gate – The defendant stated in cross examination that this was done to increase the security of the premises – no evidence as to how much was expended.
- (3) Painting of the house on several occasions – It should be noted that the defendant and her family were the occupants of the premises from 1989 to the present date – No rent or mortgage has been paid by them.
- (4) Repairing of the driveway – Defendant admitted that this was done to avoid injury to herself and the other occupants.
- (5) Fixing of leaks in the bathrooms.
- (6) Cutting of the lawn.
- (7) Fixing the inside of the roof by replacing some gypsum which had fallen out.

The general principle which relates to improvements made by one person on the land of another is that where a person carries out work on the property of another without agreement with the owner and without the request of the other, that person acquires no rights in the property.

All the "Improvements" which were done to the property by the defendant she conceded were done without any agreement by the plaintiff. In addition none of these "improvements" were of such a substantial nature as the law envisaged would give the defendant an equitable interest in the property.

THE LAW

The Certificate of title in this case states that the plaintiff and the defendant are registered as joint tenants. The transfer however does not state what are the respective shares of the parties in the property. The plaintiff on one hand is claiming a 100 per cent share, while the defendant on the other hand claims that she is entitled to one half share in the property.

The Classic statement of the law is to be found in the Judgment in **Dyer v Dyer** 1788 2 Cox Eq. Cas. 92 at P.93 and cited with approval by Lord Upjohn in **Pettit v Pettit** [1969] 2 ALL ER 385:

"The clear result of all the cases, without a single exception, is that the trust of a legal estate whether taken in the names of the purchasers and others jointly, or in the names 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."

In other words where real property is vested in a purchaser jointly with others, a resulting trust will be presumed in favour of the person who is proved to have

paid the purchase money, the beneficial interest in the property "results" to the true purchaser.

In the case of **Bernard v Joseph** [1982] 3 ALL ER 162 at P.170 Griffith L.J. said:

"In the absence of any express declaration as to the beneficial interest the judge must look to see the respective contributions made towards the purchase price. In the unlikely event that the house was bought without a mortgage, their respective contributions to the purchase price will determine their share in the equity."

In that same case Lord Denning in his judgment stated that:

"As between husband and wife, when the house is in the joint names and there is no declaration of trust, the shares are usually to be ascertained by reference to their respective contributions, just as when it is in the name of one or other only. The share of each depends on all the circumstances of the case, taking into account their contributions at the time of acquisition of the house and in addition their contribution in cash or kind, or in services, up to the time of separation."

The common theme expressed in these Judgments is that where there is no express declaration as to the beneficial interest in the property, regard must be given to the contributions made to the purchase money by each party to determine what is their share in the equity.

In the cases of **Pettit v Pettit** and **Bernard v Joseph** specific reference was made to married couples, but this principle has been extended and has been applied to other relationships such as common law unions (man & mistress) in **Cooke v Head** [1972] 2 ALL ER p. 38 where Lord Denning had this to say:

"It applied to husband and wife, to engaged couples and to a man and mistress and maybe to other relationships too."

By virtue of this expansion in the law, the relationship between Mr. Hunter and Miss Carter would be governed by these principles.

As was said earlier the transfer in this case does not state the share of each party in the property. Regard will therefore have to be paid to the contributions made by each party to the purchase price. Having accepted the evidence of the plaintiff that he alone was responsible for the payment of the entire purchase price, I find that he is entitled to the entire beneficial interest in the property at 19 Canal Drive, Hampton Green Spanish Town St. Catherine.

Further support for this view can be found in the unreported Jamaican case of **Vinnate Hall-v Leaford Hall** - Suit F.1995/H129 heard on 24th April, 1998 where Langrin J. (as he then was) stated:

"The law provides that where the spouse's money is used to purchase property which is conveyed into joint names, the owner of the legal estate is presumed to hold the property on a resulting trust for the person who provided the funds."

I therefore find that there was a resulting trust in favour of the plaintiff Mr. Vanroy Hunter in respect of the joint interest of the defendant Miss Olive Carter. Judgment for the plaintiff on the Claim and Counter-claim.

Judgment for plaintiff in terms of the following declaration and orders:

1. That the plaintiff is the sole proprietor of the legal and equitable estate in all that parcel of land situate at 19 Canal Drive, Hampton Green, Spanish Town in the parish of St. Catherine, Registered at Volume 982

Folio 409 of the Register Book of Titles.

2. That the defendant do deliver up possession of the said land to the plaintiff such order to be effective from the 30th day of September, 2001.
3. That the defendant do deliver up to the plaintiff the duplicate certificate of Title for the land Registered at Volume 982 Folio 409 of the Register Book of Titles.
4. An order that the Registrar of the Supreme Court be empowered to sign any documents of sale or transfer in the event the defendant fails or is otherwise unable to do so.
5. Costs to the plaintiff to be taxed if not agreed.