

Judgment B

JUDGMENT

SUIT NO. E 262 OF 2000

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

IN THE MATTER of the Application for
rectification of the share register of the
Jamaica Lottery Company Limited

AND

IN THE MATTER of the Companies Act

BETWEEN HAROLD MORRISON APPLICANT

AND MARJORIE MORRISON 1ST RESPONDENT

AND JAMAICA LOTTERY COMPANY LIMITED 2ND RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE ELLIS

THE 10TH DAY OF MAY, 2001

Ellis J.

The applicant by Originating Notice of Motion dated July 5, 2000 seeks an order for rectification of the register of Members of the Second Respondent by:

1. Striking out the name "and/or Marjorie Morrison", " and/Marjorie Morrison" from share certificates Nos. 13, 28, 47 and 80 the last three being bonus share certificates.
2. That the company, the Second Respondent cancel the share certificates 13, 28, 47 and 80 and issue share certificates in relation to them in the name of Harold Morrison only;
3. The Company, the Second Respondent make the necessary alterations in the Register within fourteen (14) days of the Order;
4. The rectification shall be effective as of the date on which the applicant was registered as holder of the shares.

From a reading of Affidavits and hearing the submissions of Counsel and considering the Several cited cases and some which I have looked at on my own volition, I make the following findings:

1. The Appellant did apply to be allotted 250,000 shares in the Second Respondent;
2. The Applicant paid for those shares and they were allotted to him on July 15;
3. The Applicant in 1992 did place the name of the First Respondent on the share Certificate on an "and/or" basis;
4. The Applicant by placing the First Respondent's name on the share certificate cannot be in all the circumstances, including paragraphs 4 – 6 of his Affidavit and other documentary evidence, be presumed irrebutably to have made a gift to the First Respondent either by gift absolutely or by presumption of advancement.
5. Any presumption of advancement has been rebutted.
6. The rebuttal of the advancement, results in the First Respondent and the Applicant himself holding the shares on a resulting trust for the Applicant solely: Vide: **Benger v Drew (1721) 1 P. Williams 607 (found in English Reports New series) See also Rider v Kidder (1805) to VES. 360, see also Shepherd v Cartwright (1955) AC 431.**
7. Even if I am wrong on the above finding I find that the action of the Applicant at most created an imperfect gift.
8. That imperfect gift in order to be perfected required a statutory intervention vide S. 74 & 76 of the Companies Act and that was not done.
9. There remains therefore still an imperfect gift which cannot enure to the First Respondent's' benefit.
10. The First Respondent is caught by the rule that Equity will not assist a volunteer. A voluntary transfer is ineffective both in law and in Equity where something remains to be done by the transferor or in order to render the transfer effective. It is only when the transferor has done everything which is necessary for him to do that the law and equity will assist.
11. In this case the Applicant did not submit any instrument of transfer vide S. 74

of the Companies Act neither did he make any request for a transfer of shares vide S. 76 of the Act. In the light of this finding the case of Milroy v Lord (1862) AER (Rep) 783

is of moment.

12 I must remark that Mr. Henry relied on and used Walton's case skillfully. I am not however convinced as to the applicability of Walton's case to these circumstances. In the circumstances the Applicant is the sole owner of the shares.

13. As such he is competent to seek a rectification of the register of Members under S. 115 of the Companies Act.

In light of the above findings I make orders in terms of paragraphs 1 (a) (b) (c) & (d), 2 (a) and (b), and paragraphs 3 and 4 of the Originating Notice of Motion dated July 5, 2000.

I have come to no conclusion on the issue of costs and invite submissions on this issue.

S. M. Shelton: Submits costs ought to be granted to the Applicant against the 1st Respondent as this matter was hotly contested by this Respondent.

Henry: I am in the Court's hands as regards costs.

Judge: Order in terms of Paragraphs 1, 2, 3, & 4.

Henry: Requests Stay of Proceedings for six (6) weeks.

Judge: Stay of Proceedings granted for 6 weeks.

On May 10 2001 Costs to Applicant to be taxed if not agreed.