JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 29/95

BEFORE: THE HON. MR. JUSTICE RATTRAY, P.
THE HON. MR. JUSTICE PATTERSON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.

BETWEEN	**WESSELL GEORGE PATTEN**	**APPELLANT**
AND	**FLORENCE EDWARDS**	**RESPONDENT**

Dennis Forsythe for appellant

Carleen McFarlane for respondent

October 28, 29 and December 20, 1996

PATTERSON, J.A.:

This appeal by Wessell George Patten ("the appellant") arose out of an action commenced by Originating Summons, whereby Florence Edwards ("the respondent") sought the following declarations and orders:

> "(a) That FLORENCE EDWARDS is the sole proprietor of All That Parcel of Land part of Runaway Bay in the Parish of Saint Ann registered at Volume 677 Folio 51 of The Register Book of Titles of Jamaica.
>
> (b) That WESSELL GEORGE PATTEN has no beneficial interest in the said parcel of land registered at Volume 677 Folio 51.
>
> (c) That the name WESSELL GEORGE PATTEN be removed from The Register Book of Titles as Tenant-in-Common along with FLORENCE

> "EDWARDS upon such terms and conditions as this Honourable Court thinks fit.
>
> **(d)** That this Honourable Court will declare the respective interest of the Plaintiff and the Defendant in the property registered at Volume 677 Folio 51."

Langrin, J heard the matter and made the following order and declaration on the 31st March, 1995:

> "**(1)** Judgment for the Applicant/Plaintiff.
>
> **(2)** Both parties are Tenants-in-common in the land in proportion of 75% to the applicant and 25% share to the Respondent/Defendant.
>
> **(3)** No Order as to costs."

It is against that judgment that the appellant appealed seeking an order that "the shares of the parties in the property are equal by virtue of the appellant's expenditures for improvements and repairs" and also "that the respondent do pay the costs of the action and of this appeal, to be agreed or taxed." On the 29th October, 1996, we dismissed the appeal and our reasons for so doing follow.

The undisputed facts of the case can be simply stated: William Edwards was the registered proprietor of the land in dispute ("the property") which is situate at Runaway Bay and registered at Volume 677 Folio 51 of the Register Book of Titles. The respondent was his wife up to sometime in 1985 when they were divorced. Pursuant to the terms of settlement of their matrimonial property, the respondent acquired a one-half interest in the property. The said William Edwards was desirous of disposing of his remaining one-half interest in the property, and in 1986 he entered into an agreement with the respondent

for the sale of the said property to her. The consideration was stated as follows:

> "THREE HUNDRED THOUSAND DOLLARS ($300,000.00) of which the Vendor acknowledges to have received the sum of One Hundred and Fifty Thousand Dollars ($150,000.00). The balance is to be paid as to not less than Fifty Thousand Dollars ($50,000.00) on execution hereof by the Vendor and Purchaser and the outstanding balance subject to Mortgage as set out in the Special Conditions herein."

It is quite clear that the said William Edwards was disposing of his one-half interest valued at $150,000. But the respondent did not have enough money to complete. It was then that she approached the appellant, her brother, and sought financial help to purchase the one-half interest of William Edwards. There was some dispute as to what payments were made by each party, but the learned judge came to the following conclusion, which Mr. Forsythe readily conceded to be unassailable:

> "My conclusion on the evidence is that I find as a fact that only one-half of the property valued at $300,000.00 was sold to both parties. Accordingly, the interest of the respondent at the very outset was a share in 50% of the property. I came to this conclusion based on the admission he made not only in this affidavit but under cross-examination.
>
> I find that both parties contributed equally in paying the deposit and the mortgage in that one-half share."

The property was transferred to the respondent and the appellant as tenants in common. It was not given in evidence whether the certificate of title stated the proportion of the undivided share that each held, but, as Langrin, J

correctly stated, the beneficial interest of the appellant could only be in one-half of the property.

A further unchallenged finding of fact was that substantial repairs were effected to the premises, and a "considerable amount" of the costs of such repairs was borne by the appellant. The repairs were done subsequent to the offer for sale made by William Edwards to the respondent. The improvement arising from such repairs was effected without the express or implied agreement of the parties. Mr. Forsythe submitted that the amount expended by the appellant for the repairs was $1,854,500, and that the respondent did not refute that. Therefore, so he said, the appellant was entitled to an added equitable interest in the property to the extent expended for the improvement. He submitted that the learned judge "was bound by the spirit of equity to search for a solution to suit the case, and he failed to do so."

The learned judge did consider the question of whether the applicant was entitled to an equitable interest in the property over and above the 25%. He relied on the principle enunciated in ***Muetzel v. Muetzel*** [1970] 1 All E.R. 443, where Edmund Davis, L.J. said:

> "...the fact that one spouse spends money on extension of that house does not mean that the other can claim no part of the increased value of the property resulting from the extension. On the contrary, in the absence of a specific agreement, the extension should be regarded as accretions to the respective shares of each and not as affecting the distribution of the beneficial interests. In other words, the division must stand whether applied to the house in its original or in its extended form."

In light of that principle, the learned judge concluded that the proportion of the appellant's beneficial interest could only be increased if a constructive trust could be inferred. His conclusion that in the circumstances of this case, "the door to the creation of a constructive trust remains closed" cannot be faulted. Counsel for the appellant did not contend that there was a constructive trust in the circumstances of this case, but submitted that "equity should have been satisfied in the circumstances by an application of the principle of proprietary estoppel." He referred to the judgment of their Lordships in ***Plimmer v. The Mayor of Wellington*** (1884) 51 L.T. 475. I did not find that case to be of much help. The expenditure in that case was made by Plimmer on land which belonged to the Crown under a revocable licence from the Crown, and all improvements were made with the knowledge and at the instance of the government. The principle which the appellant seemed to rely on is stated in the headnote as follows:

> "The equity to arise from expenditure on land need not fail merely on the ground that the interest to be secured has not been expressly indicated."

In the instant case, the question of a licensee did not arise. An estoppel will protect a licensee in circumstances where he has been permitted or encouraged by the licensor to act to his detriment. The classical statement which clearly shows the basis of estoppel comes from the dissenting judgment of Lord Kingsdown in the celebrated case of ***Ramsden v. Dyson*** (1866) L.R. 1 H.L. 129 at page 170:

> "If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing under an expectation, created or

> "encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation."

The appellant in the instant case expended money for the improvement of property enjoyed by him in common with the respondent and in which they both held the legal estate and equitable interest as tenants in common. It was quite clear to me that the question of estoppel did not arise. Any amount expended by the appellant to improve the property must be regarded as an accretion to the value of the property as a whole. It cannot be regarded as an accretion to the appellant's undivided share alone with the resultant diminution in that of the respondent. If that was the position, then one tenant in common could effectively acquire the entire interest in the property by making improvements without the consent of the other tenant in common.

The true position is this: The value of the undivided share of each tenant in common will increase but the proportion in which they hold their respective share remains constant. But the money expended by one tenant in common to effect the improvement can be recovered in a suit for partition or on a distribution of the value of the property as was decided in ***Brickwood v. Young*** [1905] 2 C.L.R. 387 (H.C.), a case from the High Court of New South Wales. The headnote reads as follows:

> "A tenant in common who at his own cost repairs or improves the property cannot recover from other tenants in common a proportionate part of the cost. But if the tenancy in common is brought to an end

> "by partition, sale by order of the Court, compulsory acquisition, or the like, the tenant who has expended money on the property is entitled to a lien for the amount by which he increased the value of the shares of the other tenants in common."

In my judgment, the learned judge arrived at the right decision by declaring the interest of the appellant and the respondent to be 25% and 75% respectively. I therefore concurred in the dismissal of the appeal, affirmed the judgment of the court below and ordered that the appellant pays the respondent's costs of this appeal, such cost to be taxed if not agreed.