IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM HCV 0237 OF 2003

BETWEEN	PEARL SALOME	APPLICANT
A N D	BRENDON SALOME	RESPONDENT

Appearances

Mr. H. S. Rose for the Applicant.

Mr. G. Steer instructed by Chambers, Bunny & Steer for the Respondent.

Williams, J.

Heard: March 6 & 8 and June 20, 2007

The relationship between Pearl and Brendon Salome has deteriorated to a point where they cannot now even agree as to how long they knew each other before they got married.

Mr. Salome even sought to say they did not have much of a relationship before he decided to ask her to be his wife. It was only after some pressing, while being cross-examined, that he reluctantly admitted to a friendship.

She said they met in 1979 and a relationship started in 1980. He said they met in either 1986,- as in his affidavit, or in 1983 – as per his viva voce evidence.

They agree they were wed in 1987 and she moved in with him in a house he had acquired in 1985.

There is no dispute this house was bought in his name only and he had secured the finances necessary to purchase it. She contributed nothing to its purchase.

The house is located at Lot 179 Whitehouse Housing Scheme, Ewarton in St. Catherine. When it was purchased it had two (2) bedrooms and one (1) bathroom along with the other usual amenities. The Salomes remained together until 2002, during which time the family grew; and the original structure was enlarged to four (4) bedrooms, three (3) bathrooms and a carport split-level structure.

Mrs. Salome now claims an interest in this house. She seeks the following orders inter alia:-

(1) That she has half (½), interest in the property at Lot 179 Whitehouse Housing Scheme, Ewarton in the parish of St. Catherine.

(2) That the premises be sold and the proceeds divided equally between the parties.

Before examining the evidence and determining the relevant facts I propose to consider the law relevant to this application.

The Law

The foremost authority on this area is the case of **Pettitt v. Pettitt [1970]** at page 777.

Lord Upjohn at page 813 said:

> "In the first place, the beneficial ownership of the property in question must depend upon the agreement of the parties determined at the time of its acquisition. If the property in question is land there must be some lease or conveyance which shows how it was acquired. If that document

> declares not merely in whom the legal title is to vest but in whom the beneficial title is to vest that necessarily concludes the question of title as between the spouses for all time, and in the absence of fraud or mistake at the time of the transaction the parties cannot go behind it at any time thereafter even on death or the break-up of the marriage ....."

But the document may be silent as to the beneficial title. The property may be conveyed into the name of one or other or into the names of both spouses jointly in which case parol evidence as to the beneficial ownership that was intended by them at the time of acquisition and if, as very frequently happens as between husband and wife such evidence is not forthcoming, the court may be able to draw an inference as to their intentions from their conduct. If there is no such available evidence then what are called the presumptions come into play.

Another significant authority in this area is **Lloyd Banks plc v. Rosset and another [1990] 1 All E.R. at page 1111** Lord Bridge at page 1118 had this to say:-

> "The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to be a beneficial interest against the partner entitled to the legal estate to show that he or she acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel".

In our local courts, the case of **Azan v. Azan [1988] 25 JLR 301** provides useful guidance.

Mr. Justice Forte J.A, as he then was, at page 302 stated:-

> "The determination of the beneficial interest in property of one party to a marriage, where the property is registered in the name of the other party, is in most cases difficult to resolve because of the nature of the relationship of husband and wife, which in the days when the property is acquired usually enjoys a degree of trust which results in the acceptance of verbal or implied premises made without any consideration of any possible dispute arising thereafter. In spite of this, the law does not make any presumptions of beneficial interest because of the marital relationships and therefore the partying in whom the legal estate is not vested must resort to the law of trust to establish such a beneficial interest".

On the question of how the Courts must determine whether a trust was created, he points to the judgment of Sir Nicholas Browne-Wilkinson in the case of **Grant v. Edwards [1986] 2 All E.R. 426 at page 437**

> "If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a beneficial interest has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial membership. This requires two (2) matters to demonstrated:
>
> (a) that there was a common intention that both should have a beneficial interest and
>
> (b) that the claimant has acted to his or her detriment on the basis of that common intention.

He further went on to point out:-

> "An inference of a common intention may also be founded on the basis of indirect contributions made by the claimant to the acquisition of the property. An example of this was demonstrated

> in the speech of Lord Diplock in **Gissing v. Gissing [1970] 2 All E.R. 780 at page 792:**
> "..... it may be no more that a matter of convenience which spouse pays particular household accounts, particularly when both are earning, and if the wife goes out to work and devotes part of her earnings or uses her private income to meet joint expenses of the household which would otherwise be met by the husband, so as to enable him to pay the mortgage installments out of his moneys, this would be consistent with and might be corroborative of an original common intention that she should share in the beneficial interest in the matrimonial home and that her payments of other household expenses were intended by both spouses to be treated as including a contribution by the wife to the purchase price of the matrimonial home".

Another factor which will affect the final determination of interest in the property is that of the effect of improvements made to the original structure.

In **Muetzel v. Muetzel [1970] 1 All E.R. 443 at page 445** Lord Edmund Davies said:-

> "If one postulates that the matrimonial home has been acquired by joint efforts....., the fact that one spouse spends money on extension of that house does not mean that the other can claim no part in 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 the accretions of the respective shares of each and not as affecting the distribution of the beneficial interests. In other words the divisions must stand whether applied to the house in its original or extended form".

In this review of the applicable law, I conclude by revisiting the case with which I began i.e **Pettitt v. Pettitt** (supra). The majority of the Law Lords in that case were of the view than in the absence of agreement and any question of estoppel, one spouse who does work or expends money upon the property of the other has no claim whatever upon the property of the other.

The Evidence

At the time the property was bought the parties were not married. All the monies for its acquisition came from Mr. Salome – he obtained a mortgage which was repaid by him by way of salary deductions. The property was duly registered in his name.

Mrs. Salome, in her affidavit, said that prior to marriage; they had spoken of it on several occasions and one of the issues was having a place of their own when they got married. She went on ....."to this end as I was not working he said he would apply for a National Housing Trust benefit and get a home for us to live".

Mr. Salome had lived with his parents prior to acquiring the property.

He said in his evidence that up to 1985 there was no talk of marriage and it was not until 1986 that he decided to ask her to marry him.

Although not specifically responding to her assertions, it would seem from his evidence that having acquired the house in 1985 and deciding in 1986 to marry her, they would not have had the discussions she claims.

There is no other bit of evidence concerning the existence of any common intention at the crucial time of acquisition of the property.

In her affidavit Mrs. Salome stated:

> (16) That during the marriage there was a common intention that the monies earned by both myself and my husband wound inure to the benefit of ourselves and our children and all property and things acquired was the property of myself and my husband.

(17) That pursuance (sic) to the common intention I made direct and indirect contributions to the maintenance and improvements to the property.

(18) That I acted on my detriment and incurred expenditures and expectations created and encouraged by the respondent that I would have a half (½) interest in the subject property.

In response Mr. Salome denied there being any common intention that the house was to be owned by them both. He said that at no time did he encourage her or made her believe that she had an interest in the house. He said in his affidavit

(30) That save and except that my wife the claimant paid for the work to the original bathroom in 2001 she has neither contributed to the acquisition of the house or to the improvements and additions thereto.

In giving her viva voce evidence Mrs. Salome was clearly confused as to certain details. She admitted being unable to recall certain things. Mr. Salome came across quite arrogant but he too had difficulty recalling important details. He however, was able to exhibit documentation in support of his claim to being solely responsible for the financing of the purchase and the subsequent expansion of the house.

Mrs. Salome relied on her failing memory to try to establish the fact that she made contributions directly and indirectly towards the expansion in particular.

The parties agree Mrs. Salome stopped working around the time their first child was born. They disagree as to why.

She admitted that where she had first sworn in the affidavit that she had stopped after the birth of the child because he wished her to stay home and care for him and the child; this was in fact not true. In her viva voce evidence she said she became ill after she became pregnant and he told her from then to stop working.

He denied this and said it was her decision to stop due to problems she had with her employers.

Whatever the reason, there is no dispute that he was the only one who had employment for much of the marriage.

In her affidavit however she says for eleven (11) of the fifteen (15) years of marriage she had to supplement whatever monies he gave her by baking and sewing and selling the finished products.

Although denied in his affidavit, Mr. Salome under cross-examination admitted that she did in fact earn some monies from these activities.

She said she helped to buy food, clothes and other household items. He said the money he gave her was sufficient.

It is agreed that he always paid utility bills, school fees and, as already stated, mortgage payments from salary deductions.

Mrs. Salome said she further supplemented her monies by being in a "partner" and he too became part of this scheme. Although it was suggested to her by Mr. Steer on behalf of Mr. Salome this was not true, Mr. Salome admitted while he was being cross-examined that he did in fact participate.

Neither party could give clear and concise evidence as to the contributions made to this partner for each "hand". It was also unclear what each "draw" was. It was

however agreed he had first three (3) and then four (4) "hands" whereas she had two (2). She tried to give evidence as to each hand but these were proven to be incorrect as they failed to add up to the draws she claimed she got. He just professed a lack of knowledge as to details of the partner.

She says she gave him fifty-seven thousand dollars ($57,000) to assist in the purchase of items for extending the house. This she says was from one such draw – this is against her assertion that her largest draw was forty-two thousand dollars ($42,000). Other monies from her draw later was used, she said, to deck the roof and buy a water heater.

She does not deny that the first monies for the house improvement came in 1994 from a loan obtained from the National Housing Trust. He obtained the loan and he serviced it.

Mrs. Salome said after a while his salary was used to pay his "partner" amount so they could save money to bolster his shares in a credit union so as to obtain a loan to further expand the house. In this area evidence was somewhat conflicting and unclear as in her affidavit she said they had four (4) hands in a partner of forty-two thousand dollars ($42,000) and two (2) hands were placed in the credit union and the balance used to buy tiles and other materials. Under cross-examination she said they never had hands together but that he gave a portion of her two (2) and a portion of his four (4) hands to bolster the shares. She now said four (4) hands was one hundred and sixty-eight thousand dollars ($168,000) and two hands was forty-two thousand dollars ($42,000).

While he agreed he borrowed from the credit union he said he was able to repay this loan, give her money to run the household as well as to pay his partner.

He exhibited a photocopy of a form which he says is the loan application form and the loan agreement. It is indicated there that he used as security for the loan of $248,663.05 the share balance of $69,817.06 and the bill of sale on a 1989 Nissan Sunny motor car. She had no knowledge of the latter being used.

Mr. Salome said he did in fact use some of his partner money to assist in doing work on the house specifically to slab the roof. Significantly, he almost grudgingly admitted under cross-examination that Mrs. Salome gave him money to assist in the additions. He also admits to her claim that in 2001 she refurbished a bathroom. She said this costed $26,500.00 and he does not challenge this.

Another significant assertion by Mrs. Salome is that in 1994 he took her to National Housing Trust to have her name added on the title as she says he declared the property belonged to them both. This she said was done because he stated that her father had died and her mother's name was not on the title and the matter was still at that time with the Administrator General. She said he claimed he did not want this to happen to her. The title was not available at the time.

Mr. Salome denied any such conversation. There was no title ready in 1994. The title exhibited by Mr. Salome indicates it was issued in May 1996 and it was in March of 1997 that the property was transferred to him. They remained together for at least four (4) years after this. Her name was never added.

The Submission

For the claimant, Mr. Rose argued that she was forthright with her answers and by her demeanour was not trying to mislead the Court. He recognized that she did get into

difficulties on the question of the partner and the amounts thrown and when and what sums were obtained therefrom. He pointed to her clearly stating that she contributed towards the building and when the defendant saved his money for the partner she took up the "slack" as she described it.

He further submitted that when the defendant was cross-examined a different picture was revealed and that one got the impression that he was trying to be clever in being minimalist and evasive in his answers. He highlighted facts which he opined provides clear evidence of significant contributions by Mrs. Salome to the property based on what must have been a reasonable belief that she would be part owner of this home. The assertion came after he had highlighted the following admissions on the part of the defendant.

(1) That although in his affidavit he said he was not aware of the claimant earning any money – this was not true.

(2) That his assertion in his affidavit that he never saw her sew any type of garment for sale or for the children was also admitted to be not true.

(3) The denial that the claimant had even given him money to buy anything was withdrawn by his concession she gave him money to buy a washing machine.

Mr. Rose went on to submit that there is no doubt that she acted to her detriment to remain at home, and to take care of the family and to engage in activities to supplement the family income; to add monies toward the extension of the home in the belief as the defendant stated the home belonged to them both.

He relied on the case of **Pettitt v. Pettitt [1969] 2 All E.R 385** which he submitted established that the common intention can be inferred by the conduct of the parties.

He opined that if we examine the conduct of the parties in the instant case one can clearly see and can infer that the house was the joint property of the parties.

He referred to the decision of **Ewen v. Ewen Suit # E427** of 2000 heard May 6 and 10, 2002 as being most persuasive when compared with the instant case.

He also referred to the case **Joseph v. Joseph SCCA 13 of 1987** where Ross J.A. stated that the evaluation of spouse's equity in property where contribution is indirect is invariably beset with difficulties.

He concluded that on the principles followed by the cases the claimant is entitled to one half (½) share in the matrimonial home.

For the defendant, Mr. Steer began by pointing to what he describes as the un-contradicted evidence of the husband and accepted and confirmed by the wife, that the house was purchased two (2) year prior to marriage; the payments as to the acquisition were made solely by the husband and the mortgage by salary deductions. This led him to submit that the original structure would belong entirely to the husband, the wife having no imput whatsoever in it.

He submitted that there was no evidence before the Court of any common intention between the parties whether actual of inferred in respect of the original house.

He referred to the case of **Lloyds Banks v. Rossett [1990] 1 All E.R page 1111** as to the question of common intention and its effects.

Mr. Steer opined that Mrs. Salome's evidence left much to be desired as her testimony under cross-examination was different from the affidavits which themselves contradicted each other. He submitted that the question of partner draw and the extent it was used to extend the house is critical in determining whether she had a share in the extension and if so the extent of it. He went on to opine that her evidence in respect of this partner cannot be believed.

After reviewing the evidence, he concluded that there being no common intention between the parties, as to the purchase of the home and also to the extension whatever act or acts done by the wife to her detriment cannot give her a share.

Application of the law to the facts

There is little evidence of any express discussions between the parties prior to the acquisition of the house as to their beneficial interests. This is, of course, not unusual in matters such as this.

Mr. Salome moved from his parent's home into the one he purchased and when he got married two (2) years later brought his wife to live with him. Her assertion that he had said he was going to get a home from them to live, is the only evidence from her as to discussion prior to marriage. This is not to my mind sufficient to conclude that there was any agreement or even understanding that she was getting a share in his house.

The contributions which Mrs. Salome made thereafter to the improvement and expansions must be assessed against a background of whether there existed an understanding she would acquire a beneficial interest in the house.

The contributions she has asserted she made is not easily determined from her evidence because it was not clear or precise. While it is agreed she made some contribution it appears to be negligible. They did not relieve Mr. Salome from much of the expenditures he had especially as it relates to the mortgage installments initially, or to the subsequent repayments of the loans for the improvements.

Although neither party can speak to what he was actually earning, it appears "the slack" she said she picked up was not a substantial one.

There was no credible evidence of conduct on behalf of Mr. Salome which could lead to any inference that he wished for his wife to have a share in the home. Her act of refurbishing a bathroom was done to improve the home and while he did not stop her from doing so, she cannot claim an interest in the house from this.

On the totality of the evidence I find there is not sufficient evidence for me to find that Mrs. Salome is entitled to half (½), share in the property.

Accordingly there is judgment for the defendant with cost to him to be taxed if not agreed.