Privy Council Appeal No. 66 of 1998

Helga Stoeckert *Appellant*

v.

Margie Geddes *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 13th December 1999

Present at the hearing:-

Lord Browne-Wilkinson
Lord Steyn
Lord Hoffmann
Lord Saville of Newdigate
Lord Hobhouse of Woodborough

*[Delivered by **Lord Saville of Newdigate**]*

This is an appeal brought with the leave of the Court of Appeal of Jamaica from a judgment of that Court dated 18th June 1997, which allowed an appeal from a judgment of Clarke J. dated 19th December 1995 in the Supreme Court of Judicature of Jamaica.

By his judgment Clarke J. held that Helga Stoeckert was entitled to a one sixth share of the assets of Paul Geddes as at 16th April 1991. The Court of Appeal reversed this decision which Helga Stoeckert now seeks to restore. Mr. Geddes died in June of this year at the age of 89 and his widow and executrix has been substituted as respondent to Helga Stoeckert's appeal.

Mr. Geddes was a successful Jamaican businessman. Helga Stoeckert was born in Germany but in 1958 at the age of 27 went to Jamaica and the following year met Mr.

Geddes, who was married but separated from his wife. The relationship between Helga Stoeckert and Mr. Geddes appears to have become intimate soon after they met. Mr. Geddes divorced his wife in 1962 and from 1973 he cohabited with Helga Stoeckert in a house at 1A Braywick Road, St. Andrew. Mr. Geddes told Helga Stoeckert that because his marriage had been unhappy he did not want to remarry.

According to Helga Stoeckert, whose evidence the judge accepted, the relationship remained loving and stable until 16th April 1991, when Mr. Geddes wrote a letter to Helga Stoeckert bringing it abruptly to an end. Shortly afterwards Mr. Geddes married the respondent and removed Helga Stoeckert's belongings from the house.

Helga Stoeckert was also in business. When the couple met, she was operating a meat processing business with her sister in Jamaica but in 1967 (with financial assistance from Mr. Geddes) she and her sister acquired the Four Seasons Hotel in Kingston, which they have been operating ever since. Mr. Geddes also made Helga Stoeckert a director of Geddes Refrigeration Limited, one of his companies, though she received no remuneration for serving on the board of this company.

Helga Stoeckert's claim is based on the proposition that there was an agreement, arrangement, understanding or common intention between her and Mr. Geddes, arising from express discussions between them, that she should have a beneficial interest in his assets. Her case was that she acted in reliance on this state of affairs with the result that she became the beneficiary under a constructive trust of a share in those assets. She did not suggest that she had made any direct or indirect financial contribution to the acquisition of any of the assets.

At the trial counsel for Mr. Geddes called no evidence, relying instead on a submission that Helga Stoeckert could not be entitled to an interest in any of Mr. Geddes' assets because the evidence adduced by her could not establish a trust in her favour.

Clarke J. rejected this submission and held that Helga Stoeckert had established a constructive trust in her favour,

since she had satisfied the criteria stated in the following terms by Sir Nicolas Browne-Wilkinson V.C. (as he then was) in *Grant v. Edwards* [1986] Ch. 638, 654:-

> "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 ownership. This requires two matters to be demonstrated: (a) that there was a common intention that both should have a beneficial interest; (b) that the claimant has acted to his or her detriment on the basis of that common intention."

In reaching his conclusion Clarke J. said this:-

> "What is that evidence of common intention and is that evidence sufficient? I accept Miss Stoeckert's evidence in this connection as follows:
>
> (a) that just before the General Election in 1980 and, prior to Mr. Geddes leaving for Mexico, he verbally assured her that she would be totally in charge of all his possessions and business, if the Labour Government had lost the election;
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> (b) that on a number of occasions in the 1980s after the Jamaica Labour Party had won the General Election and after Mr. Geddes had returned to Jamaica, he verbally assured her that she should not worry about any financial matters as she would be the 'richest corpse' in Jamaica;
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> (c) that Mr. Geddes used the expression 'richest corpse' in the context of their talk about her financial security, assuring her that until she died he would make her wealthy and would provide for her in his will equally with his two daughters;
>
> (d) that Mr. Geddes' assurances to her that she would have a beneficial interest in his assets stood until their relationship ended on 16th April 1991;
>
> (e) that those assurances found written expression in his will which, in her presence, he instructed his

lawyer to prepare; the will was drawn up by his lawyer and duly executed by Mr. Geddes in 1985 only after she was taken to the lawyer by him. By the will (as yet unrevoked) a copy of which he gave her that same year, he appointed her one of his executrices and bequeathed to her a life interest in one third of the income from his residuary estate;

(f) on or about 15th June 1988 he gave her 23,300 shares in Desnoes and Geddes Ltd. in which he then held 9.2 million shares: And between 1983 and about 1989 he established respectively in their joint names and for their benefit and not for convenience three not insubstantial bank accounts of interest bearing status, namely in Royal Bank of Canada, Europe Ltd. in London, England; Barnette Bank, Florida, USA; and Cayman National Bank in Cayman Islands.

On those facts I find that there was an express oral agreement as contended for by Mr. Miller. Those facts are, in my view, of great cumulative force. When taken together, as they must in the circumstances of this case, they provide, in my opinion, sufficient direct evidence of the oral agreement pleaded by Miss Stoeckert of a common intention between herself and Mr. Geddes that both would have beneficial interests in the assets vested in him. Such a common intention remains effectual in spite of the sudden and devastative ending of the relationship by him on 16th April 1991 and the revocation of his will by his subsequent marriage to someone else on or about 22nd April 1991."

It should be noted at this point that the "assurances" to which the judge referred in paragraph (d) of his list of the matters upon which he relied must be a reference to what he described as the verbal assurances listed in paragraphs (a) to (c), since the evidence does not reveal any other relevant assurances, nor was Mr. Mahfood Q.C., counsel for Helga Stoeckert, able to demonstrate the contrary. This paragraph, therefore, contains not merely a finding of fact (namely that the assurances stood until the relationship ended) but also the conclusion of the judge that these assurances amounted to an assurance that Helga Stoeckert would have a beneficial interest in Mr. Geddes' assets.

Clarke J. also decided that Helga Stoeckert had acted to her detriment on the basis of this common intention, by providing, as he put it, "services which took the form of encouragement, discussion and advice given by her at Mr. Geddes' request and without remuneration. They were given in relation to his business and aspects of the construction and improvement of premises at 1A Braywick Road". After detailing the services provided, the judge found that Helga Stoeckert had, as pleaded by her, served as "a confidante and business supporter to the defendant at every level, and was a sounding board in and about his business interests and decisions". He concluded that, since Helga Stoeckert had rendered these services in reliance on the common intention that she would have a beneficial interest in Mr. Geddes' assets existing during the period of their cohabitation, she satisfied the conditions for the creation of a trust in her favour in the assets of Mr. Geddes as they existed down to 16th April 1991.

The Court of Appeal (Rattray P., Gordon and Bingham J.J.A.) took a different view and so do their Lordships.

Assuming for the purposes of the argument that the legal criteria called in aid by the judge are theoretically applicable to the sort of circumstances found in this case, their Lordships agree with the Court of Appeal that no agreement, arrangement, understanding or common intention that Helga Stoeckert should have a beneficial share in Mr. Geddes' assets can be spelt out of the facts and matters relied upon by the judge, whether viewed separately or cumulatively. The fact that Mr. Geddes told Helga Stoeckert that if he did not return from Mexico she would be in charge of all his possessions and business does not suggest that she owned or was to own a share in those assets, any more than telling her on a number of occasions that she would be the "richest corpse" in Jamaica, whatever that meant. Assuring her that until she died he would make her wealthy and would provide for her in his will equally with his two daughters; and making a will in which she was bequeathed a life interest in one third of the income from his residuary estate, are in truth matters that are inconsistent with the suggested common intention, for were that intention to exist, her wealth would survive her death and so far from being confined to a share of income, she was or would be entitled to a share in the capital. The

gift of shares in Desnoes and Geddes Ltd. and the establishment of joint accounts again are not matters that suggest that Helga Stoeckert was or was to be the beneficial owner of a share in Mr. Geddes' assets. On the contrary, as Rattray P. pointed out in the course of his judgment, these actions showed that when Mr. Geddes wanted to provide for Helga Stoeckert, he made her an outright gift or facilitated her ability to draw on some, but by no means all, of his accounts.

Mr. Mahfood sought to criticise the Court of Appeal for, as he put it, reversing the findings of fact of the judge, notwithstanding that Mr. Geddes had called no evidence to rebut the evidence of his client. Their Lordships take the view that this criticism is unjustified. The Court of Appeal did not reverse any findings of fact. What that Court did and in the view of their Lordships rightly did was to reverse the conclusion of the judge that the facts found established as a matter of law the alleged agreement, arrangement, understanding or common intention.

In these circumstances questions of detriment, reliance and the like do not arise for consideration by their Lordships, who for the reasons given will humbly advise Her Majesty that this appeal should be dismissed with costs.