

✓
1981
Supreme Court

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1978/B244

BETWEEN	Bailey Viola	Plaintiff
A N D	Johnson Petra	Defendant

Mr. Kirlew and Mr. Gary Collins instructed by R. Francis for plaintiff

Mr. A. Morgan ^{instructed by} / Dunn Cox & Orrett for defendant

Heard: May 11, 12, 13, 1981. 30th November, 1st December, 1981.

Delivered on: 12th March, 1982

Judgment

Morgan J.:

In this matter the plaintiff seeks:

1. A declaration of the respective rights of the parties in premises No. 15 Hampton Crescent, Washington Gardens in the parish of St. Andrew with dwelling house thereon.
2. A declaration that the defendant holds all her interest in the said premises by virtue of being registered as a Joint Tenant on Certificate of Title, Registered at Volume 948 Folio 121 as a Trustee for the plaintiff.
3. An Order that the defendant convey to the plaintiff all interest which the defendant holds or claims to hold by virtue of being registered as Joint Tenant in Certificate of Title, Registered at Volume 948 Folio 121 in respect of the said premises.

Number 15 Hampton Crescent is registered in the names of Viola Bailey and Petra Johnson, the plaintiff being the daughter of the defendant.

Mrs. Bailey commenced living with her mother at age 13 years. She was the only child. Gradually the child settled in and in time a beautiful relationship grew and flourished. In 1958 she was employed as a bus conductress and she continued to improve herself. She entered Nursing School in 1960 from which she graduated and in 1965 she got married to Henry Bailey. In 1967 she migrated to the United States of America where she commenced working first as a "permitted" nurse; her husband joining her later that year.

Since 1958 she has been supporting her mother first at their home then at the matrimonial home and while in the United States of America by sending her a monthly allowance of \$120.00. In 1968 she came to Jamaica on vacation leave to buy a house for herself. Her husband who knew of it said he was proud that she wanted to do something on her own. It was all her money - £2,000.00. In Jamaica a long standing friend, Mr. Gladstone Laing, drove her around till she finally selected No. 15 Hampton Crescent, being sold for £5,800.00. She needed £100.00 more to complete the down-payment.

Mr. Laing and a friend loaned her that sum and so she went to the Victoria Mutual Building Society to secure a mortgage loan of £3,700.00. Time was now running out on her. She had to return to the United States of America and her business was not completed. At the Building Society she met an employee, a Miss Elliott, who gave her some advice. As a result she decided to put her mother's name on the Title in order that she could act on her behalf to sign Contracts which were yet unsigned and see the mortgage loan through while she returned to the United States of America. She completed her portion of the Application Form, Exhibit 1, and left it with Miss Elliott with instructions. She then arranged for her mother to go in to see Miss Elliott to complete the document. She says the addition of her mother's name was only to create an agency in the mother to do business on her behalf and she at all times regarded that as her mother's position. She never intended to acquire the property with her.

She got possession of the house and in time her mother went to live in a part of it. She sent her \$120.00 per month but after the mortgage was paid she stopped this contribution. In 1977 she came home on her doctor's advice, to live as she was ailing from cancer. She ceased working

but her mother wanted her to work in order to bring in some money. She refused to work and so their relationship as mother and daughter broke down. There were ugly incidents resulting in her mother removing from the premises. In the result this declaration is sought to have her name removed from the Title.

The defendant, Miss Johnson, aged 62 says she was a dressmaker and earned her living from this trade while her daughter lived with her and gave her money to look after herself. She started saving £2.00 per month, in 1959, at home then acquired a Joint Savings Account with her daughter before she left for the United States of America. She had planned then to buy a house but the daughter withdrew the money to go to the United States of America. In 1968 her daughter returned and said she had enough money to make a down-payment on the house and had come to do that. Number 15 Hampton Crescent was bought and rented and the sums collected for rental paid the mortgage. In 1969 she removed to this premises and occupied the larger side. The rental was not now sufficient for the mortgage and so she made it up each month. Very little was taken from the Savings Account. The closing payment on the house was sent to her by her daughter in 1970 and she paid it.

It is a proposition of law that where a person buys property and takes the Conveyance in the name of another party or in their joint names, if there is nothing to indicate his intention that he was not taking for himself the beneficial interest then the presumption arises that he intended to obtain the beneficial interest for himself and it will be held that the person was holding it in trust for him. It is also a general proposition that the trust of a legal estate results to the man who advances the

purchase money though this is a presumption which can be rebutted by evidence of the actual intentions and declarations of the real purchaser at the time of the purchase.

The question therefore arises whether on the evidence as presented there is anything to show that the plaintiff was not taking the beneficial interest for herself. If the evidence tends to show that, then the property must be divided. If it show otherwise then the defendant will be held to be holding it on trust for the plaintiff.

I will now look at the evidence to see if it furnishes material from which I can come to a conclusion as to whether or not there was an intention to pass the property, remembering that the burden lies on the person who contends that the Certificate of Title is not to have its legal effect.

Purchase Price

The plaintiff says she brought the money from United States of America for the purchase of a house. The defendant admitted this in cross-examination, but later in cross-examination said that they both paid down on the house and she contributed £200.00. When pressed about where she got this £200.00 she spoke of having another account at the Bank of Nova Scotia, Cross Roads. She was very hesitant in answering questions about this account but admitted that it was opened after the house was bought, between 1970 - 71 which in fact was a time after the payments on the house were completed. This purported payment of £200.00 on the purchase price is clearly invented as one would reasonably expect that so important an item would have been pleaded or elicited in examination-in-chief.

Additionally in her evidence she appears to be saying that she had intended to buy a house and had opened a Joint Savings Account with her daughter but this money was used by her daughter to go to the United States of America. Unfortunately this was not put to the daughter when in the witness box to afford the Court an opportunity to hear her admissions or denials. Whether it was omitted by Counsel or was not a part of his brief and was only sprung on him while the witness was in the box I am unable to ascertain. Be that as it may, it is presumed that the Court is being asked to draw an inference that such monies as the daughter brought back in 1968 represented some of the defendant's money taken from the Savings Account. What ~~the~~ ^{defendant} says, however, in respect of the Joint Account is that she agrees that the account was in operation since 1960 in her daughter's name and her name was added in 1967 the year her daughter left for the United States of America. Her evidence in respect of this account and the house is that "very little was taken from the Savings Account." If her name was added when her daughter left Jamaica I would hold that such sums as were in the account up to that time were the property of her daughter so too the "very little" taken from it.

I have no hesitation in finding on this type of evidence that she made no contribution to the purchase price. This evidence was in the whole made up in the witness box.

Mortgage Application

This document is in evidence as Exhibit 1. At the top it states that it must be completed by the Applicant for a mortgage loan. Both plaintiff's and defendant's names appear in different handwriting at the commencement and also at other parts of the document. She had left

instructions with a Miss Elliott of the Building Society but this lady has since left the Island and was not available to the Court, but defendant admits she saw her. At paragraph 6 (b) the monthly salary of "wife/husband" is required. Plaintiff says she struck out "wife" and left "husband" and stated his salary as \$550.00 per month. However, as it appears in evidence the word "husband" is struck out and "mother" inserted. It was suggested to her that she had put her mother's earnings on the Application showing her intention to benefit her mother. She strongly denied this. On the face of the document it is obvious as she says that the word "mother" is in a different handwriting to her own which appears several times on the document. Again, if her mother's earnings were to be expressed at that time, the mother being in Jamaica, it would have been expressed in Sterling, that is, Pounds. So the only inference is that \$550.00 was United States and was stating the salary of her husband and not her mother. The document also shows that her salary \$750.00 and her husband \$550.00 made a total of \$1,300.00 and was converted into the Jamaican currency on the document to the figure "£520 sterling." There is clearly no intention shown to confer on the mother a beneficial interest and from plaintiff's evidence it appears that only paragraph 17 which requests the applicant to furnish the name and address of her agent if she is residing abroad was to have been completed. Significantly, the signature at the foot of the document is that of the plaintiff only. Altogether this gives weight to the plaintiff's argument that at the time of the down payment and the application for the mortgage loan she was buying the property for herself only and had no intention of sharing it with anyone.

158

Payments on the Mortgage

The evidence is that when she left Jamaica in 1968 the house was rented with instructions to use the rental to pay the mortgage instalments. Her mother was living elsewhere and the rental of this house was sufficient to pay the mortgage loan. In October 1969 the defendant felt that the tenants were not taking care of the property, gave them notice to quit, moved into the larger side and rented the remaining portion at a total of £40. There was now a shortfall of £3.15. On defendant's evidence it was on her own decision that she moved to Hampton Crescent so any amount contributed by her could reasonably fall under the heading ^{of} use and occupation.

The plaintiff says she continued to send her \$120.00 per month until the mortgage payments were completed in 1970. The defendant says that it was after the mortgage was completed that her daughter started sending her monies save and except for two gifts of \$20.00 and \$25.00 on an Xmas and a Birthday in 1967. Now two letters were put in evidence written by the plaintiff to her mother who she affectionately called "Big J." It is a convincing assumption from the tenor of these letters that there was a healthy respect shown towards the defendant by the plaintiff. Her mother was a seamstress but it is my finding that she earned very little from it as in the early days she had to supplement her earnings with domestic work. It was her daughter who had stopped her from doing domestic work as soon as she started working as a bus conductress. She helped her from her allowances as a student nurse until she graduated and became a nurse. When she left for the United States of America she left her to live in the matrimonial home with her husband where everything was provided for her even a maid in the house. When her husband left to the United States of

America he left her in the house which she sub-letted and received monies for her own use until 1968 when she moved into Hampton Crescent using one half of the house. Her daughter came to Jamaica twice per year at summer and at Xmas and stayed with her and paid bills. She was a caring daughter. The defendant made two trips to the United States of America. It is my considered belief that the plaintiff assumed the responsibility all along of caring for her mother which included sending her money. I find that the defendant had no capacity to pay, did not pay and never carried the mortgage payments from her funds.

Discharge of Mortgage

This was paid by the plaintiff with funds in her possession together with some funds from the Joint Savings Account totalling \$3,920.99. This is not in dispute.

It is to be noted, then, that the defendant made no financial contribution to the purchase of the house but that finding I think is in no way conclusive to determine the intention of the purchaser as to whether or not the defendant should have a beneficial interest. So it becomes necessary to examine the remaining evidence in order to reach a final conclusion on this point.

The Joint Savings Account

This account was opened by the plaintiff in 1960 and in 1967 she added her mother's name to it and converted it into a "Foreign Account" that is, deposits were made from a foreign country. Looking at the sums credited for the period 1969 - 70 all lodgments except two are itemized in dollars plus cents. This the Bank Clerk says because of the rate of exchange one could safely say that the remittances were in United States Dollars -

converted to Jamaican Dollars. The withdrawals were many and in round figures only. The same applies to the lodgments converted to sterling in 1968. There was no noticeable lodgment made in Jamaican currency in this period. My conclusions are that the lodgments came from the United States of America while withdrawals were done here.

Things Said and Done

The defendant said they bought the house together even though her contribution was small and in support she exhibited in evidence two letters written in 1977 by the plaintiff to her in which she stated her intention of coming home and added "so have my half of your house ready for me." The other letter stated "please double-up - give your tenants notice and give me the small side of the house." The letter goes on to say that she will tell her when she should give the tenants notice "and what about my water rate who has been paying?" The defence submitted as to the statements underlined above that they indicated an acknowledgment on the part of the plaintiff that it was the defendant's house and the defendant's tenants.

The plaintiff says that when her mother visited her in the United States of America in 1975 she asked her to give the house to her and she told her no, ~~that~~ when she wrote "my half of your house" it was written as a joke as her mother had always been referring to it as "her house." It is clear that "my half of your house" is a senseless statement which if taken literally leads to absurdity and must of necessity be a joke. Plaintiff says she wrote "your tenants" as they were defendant's tenants, that is to say, the tenants were taken by her mother who collected the rents from them. The defendant does not deny they were her tenants and it seems to me that that could be the only meaning that could be imported to those words. It is

revealing that the plaintiff later speaks of "my water rates."

I find there is nothing in this from which I can infer that the plaintiff intended that the defendant should have a beneficial interest in the house.

Improvements (Additional Room)

It is admitted on both sides that a room was added in 1975. The plaintiff says it was at a cost of \$1,000.00 taken from her savings in the Joint Savings Account. The defendant says that it was at a cost of \$1,600 of which \$1,000.00 was her own and \$600.00 from the Savings Account. It is not quite clear in what month it was constructed or how long it took. The entries in the Savings Account were put in evidence as Exhibit 9. It shows in August a debit of \$630.00. Defendant explains this as \$600.00 - a sum she drew for the house and \$30.00 to discharge the mortgage. During the following nine weeks there appears debits of \$100, \$972.51, \$300, totalling \$1,372.51. Although she admits to having the book in her possession during that period, she does not admit drawing any of those sums or at all. This bit of evidence is difficult to absorb and the only conclusion to which I can come is that she is not speaking the truth, that she did in fact withdraw this sum to effect the addition to the house, as the plaintiff avers, but now refuses to admit.

Other Improvements

Growing and cultivating trees and laying out a lawn are acts as consistent with a good tenancy as with ownership. No weight can be placed on either of these for a conclusion of this matter.

The installation of the water heater for \$227.00 which the plaintiff says came from the proceeds of sale of pieces of furniture belonging to

her is a matter in controversy. If indeed it was installed by the defendant then it may well have been for her own comfort. So too is the concrete wall on the west boundary erected at a cost of \$700.00 and the paving of the backyard which the plaintiff denies is paved. All these items the defendant says were completed at her own cost between her return from the United States of America and plaintiff's arrival in 1975. Assuming that she did build the wall and pave the yard, I find that there was no discussion neither was there any arrangement which could link with these activities of improvement done after the purchase, to afford support for an inference of intention to create a joint ownership based on these contributions as represented by the defendant. There was no bargain between them expressed or implied that the mother should contribute her labour towards improvement of a house in which the mother was to have a beneficial interest. If in her mind she thought at the time that her daughter intended to benefit her and on that account made these contributions, I cannot be concerned with what she thought but only what the daughter intended unless I can find that she was led on by her daughter to believe so and there is no evidence that Mrs. Johnson was ever led to believe that she should have an interest but, rather, I find that she acted on her own as a good mother, responding to the kindness shown her, by protecting the affairs and property of a daughter who was away from Jamaica and was so unable to manage the property herself.

She says her contribution was \$2,000.00 which includes \$1,927.00 for improvements, room, wall and heater. It is presumed that the paved walkway would make up the balance. I was not impressed with her. She was not a witness of truth. She consistently contradicted herself.

There is one other matter to which I wish to advert. It is good law that the plaintiff ought to seek to establish her Title soon and that it is weakened by delay. The plaintiff said she made the discovery that her mother's name was on the Certificate of Title as Joint Tenant in 1975 when she applied for a mortgage to buy another property and was told that she had to get ^{her} mother's signature. She did nothing till 1978, after three years had elapsed, and ^{she} explained she did not know what to do. I find that in all the circumstances of this case her action is one capable of understanding. Defendant was assisting her in the property and the presence of her mother's name had not hitherto affected her title or enjoyment of it. The relationship was very good over the years. No one would have expected a change. It might well have been that had the defendant not taken that aggressive position the plaintiff would not have sought to have her removed from the house physically and her name from her Title. This delay in these circumstances I find does not weaken her case.

I find that the plaintiff has discharged the burden placed on her, that the defendant made no contribution to the acquisition of the premises and that no evidence has been adduced from which it can be inferred that the plaintiff intended that the defendant should have a beneficial interest.

The Court declares that the defendant holds the premises 15 Hampton Crescent upon trust for the plaintiff; that Viola Bailey is the sole owner of 15 Hampton Crescent, Washington Gardens in the parish of St. Andrew with dwelling house thereon and ORDERS that the defendant convey to the plaintiff all the interest she now holds in the said premises as trustee by virtue of being registered as Joint Tenant in Certificate of Title registered at Volume 948 Folio 121.