

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. 425/2000

**IN THE MATTER of
Lot 87 Greenwich Mews,
Steer Town Housing Scheme in the
Parish of St. Ann
Registered at vol. 1232 Folio 251 of
The Register Book of Titles**

AND

**IN THE MATTER of the Married
Women's Property Act**

BETWEEN	RAYMOND WALLACE	APPLICANT
AND	RUTH WALLACE	RESPONDENT

Appearance

Miss C. McFarlane instructed by McNeil and McFarlane for the applicant

Miss A. Beckford for the respondent

In Chambers

Heard July 23rd and July 28, 2003

Williams, J. (Ag.)

By an originating summons dated 6th October, 2000, brought under section 16 of the Married Women's Property Act, the applicant seeks the following relief:-

- (a) A declaration that the Applicant is entitled to a minimum of 50% interest in respect of premises known as Lot 87 Greenwich Mews, Steer Town Housing Scheme in the parish of St. Ann registered at volume 1232 Folio 251 of the Register Book of Titles.
- (b) Or in the alternative an order to determine the respective interest of the applicant and the respondent in the said premises
- (c) The respondent should take no steps by sale assignment of any right title or interest which she now purports to have in the said property or to do any act whatsoever to create any right, title or interest thereon
- (d) That a valuation of the said premises be taken or alternatively that a valuation agreed upon by the Applicant and the Respondent be taken and the applicant be permitted to purchase whatsoever the Respondent may have in the said premises.
- (e) And generally for a still further order that the respondent be restrained from acting with regard to the property mentioned above.
- (f) That the Registrar of the Supreme Court be empowered to sign any and all documents to effect a registrable transfer if either party refuses or is unable to do so.

- (g) Such further or other consequential relief as this Honourable Court deems fit.
- (h) Such costs as are incidental to the proceedings.

At the hearing in chambers on July 22, 2003 the respondent was absent and her attorney admitted having not been in communication with her for sometime and having been informed by relatives that she was abroad. This absence was despite the fact that as early as September 2002 the applicant's attorney-at-law served notice of the requirement for the respondent to attend to be cross-examined as to the contents of her affidavits filed herein.

Miss McFarlane for the applicant, indicated her willingness to waive this requirement and proceed to deal with the matter on her affidavit. The applicant was present as required and was duly cross-examined by Miss Beckford for the respondent.

Both sides are agreed that after their marriage in 1999 – they resided in rented accommodations with other members of their family. The respondent the time however was not permanently resident in Jamaica. A decision was made to purchase a house in 1990 and this was done through the National Housing Trust with a 100% mortgage.

After acquiring a two bedroom house with the usual amenities a decision was taken to expand this house.

The premises as improved, now consists of four bedrooms, two bathrooms, a new kitchen, a den/tv room, a washroom, a dining room, an extended living room and a front patio verandah.

Applicant's Case

The applicant in his affidavit insists that his wife's name was added to the title on his own "volition". She was out of the island when the initial application was made and thus he states he waited until she had returned to take the necessary steps to have her name added. He also says the National Housing Trust at the time did not accept joint applications and the fact that she was not ordinarily resident here would present a problem.

In evidence he explained that it was a 100% mortgage which was obtained to finance the purchasing of the house. He commenced arrangements for the mortgage to be paid by deductions from his salary and these payments started in January or February in 1991.

There was in fact exhibited a letter addressed to the attorney-at-law for the applicant under the signature of the Branch Manager at the Head Office of the Cable & Wireless Jamaica Employees Co-operative Credit Union Limited confirming that the Credit Union had been remitting standing order payments to the National Housing Trust since March 1991.

He insists that he made all the mortgage payments without the assistance of his wife and he continues to do so even to today although he left the matrimonial home since 1998.

The extension of the house, the applicant maintains was a joint project. They agreed to the necessity for it and worked together to accomplish it. In evidence he said the work was done in projects after the initial contractor had left the job. She was responsible for one project and he the other. She took charge of the electrical work and

an affidavit from her brother supports this since it was the brother who actually admits to doing this work.

The applicant in evidence claims that he obtained loans from the Credit Union to help finance the work done. He was unable to give the final cost of the work done. He was unable to say how much money he borrowed to do the work. He said his wife did send money to assist with the construction. He said it was he who got the workmen, the contractor and the architect. He said that records were kept of work done and moneys paid out but this information would now be in his wife's possession. He denied that this construction was solely the responsibility of his wife, that it was financed exclusively by her and insisted that she merely contributed to the improvements.

Respondent Case

Mrs. Wallace by way of her affidavit is contending that she is entitled to 50% interest in the original and 100% interest in the addition.

She claimed that from the outset it was her idea that they get a house. She stated that her husband lied to her in explaining how the application for the house from the National Housing Trust would be made. She claimed he said it would be a joint application and that her name would be endorsed on the Certificate of Title as co-purchaser. It was on making her own enquiries she learnt her name was in fact not on this document and it was on her insistence that it was finally placed there. She asserts that it was from this point she felt "he had positive intentions of denying me my interest in the premises".

She agrees that the applicant now solely pays the mortgage but claims that initially she would send money from the United States of America representing half of the mortgage payment for the premises each month. She even indicated that on one occasion she was misled as to the amount due on the mortgage payment and ended up paying twice as much as she should have. She however claims that it was by virtue of an order of the St. Ann Resident Magistrate's Court that the applicant had to pay the mortgage.

As to the extension done to the premises, the respondent states she undertook sole responsibility. She retained an architect and the building contractor, she purchased all construction material or would send money to the applicant for him to purchase on her behalf.

She required receipts to verify that all purchases relating to the construction were being done on her behalf and upon the applicant's refusal to comply she ceased giving money to him directly but remitted same through her sister with express instructions he should sign receipts for monies received by him. She exhibited a bundle of receipts amounting to three signed by the applicant as evidence of this arrangement. Upon her sister's migrating she would send the money to her brother who on her instructions now assumed primary responsibility for overseeing the latter stages of the construction process.

She insists that she undertook the improvements single-handedly and from her own resources. There was no common intention between the applicant and herself with respect to the improvement of the premises and any intention which existed extended

only to the acquisition of the unimproved premises and no further. She is asking for an order in the following terms:

- (i) That it be declared that the applicant is entitled to beneficial interest subject premises of no greater proportion than fifty percent (50%) of the unimproved value thereof;
- (ii) That the respondent be at liberty to purchase the value of the applicants beneficial interest in the premises within one year of the date of the order or within such greater time as may be stipulated by the Court.

Before addressing the issues and the law as it relates to this matter I feel compelled to comment on the paucity of documents presented to support the claims of either side. It is true that whilst a marriage is subsisting with no problems the parties thereto will have no thought to preserving these items, in the instant case reference is made to their existence and the evidence suggest that some ought to have been produced.

The applicant speaks to obtaining loans from his Credit Union to assist in the expansion. In his evidence he indicated he had not sought to get relevant documents together.

The respondent in her affidavit maintains she had receipts and produced three (3) to be evidence of construction process represented only a period of three (3) months, surely construction lasted longer than that time from the evidence. Given her suspicions from early no documents were obtained to prove her contributions to the mortgage payment. Reference is made to a book in which

records were kept yet none is produced. Surely some proof of these items would have assisted the Court even as to how it relates to the credibility of the parties.

There is in this matter no dispute that the property is registered in their joint names as joint tenants, although there is some dispute as to how the wife's name came to be on the title the fact is that it was added there by the husband who says he did it of his own "volition." The title itself was not produced in evidence as it is still in the possession of the National Housing Trust.

It is trite law that this ownership in and of itself does not mean equal rights in the beneficial interest as there may be some other intention expressed by the parties or that may be inferred by their conduct or there may be cause to apply certain presumptions. However, in this case it is clear that the intention of these parties in the acquisition of this property was that it was to be the matrimonial home with each party having joint beneficial interest in the property. This is stated by both parties.

The real issue in this case therefore is the effect on their interest from their assertions that each did something which entitles them to greater share.

The applicant is now saying he paid all the mortgage.

The respondent claims she alone contributed to find financed the extension work that was done and there she alone is entitled to interest in it.

The decision of Muetzel vs Muetzel 1970 All ER 443 per Lord Edmund Davis at page 445 does provide guidance in this regard:-

“If one postulates that the matrimonial home has been acquired by joint efforts (as I think one must in the present case) 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 divisions must stand whether applied to the house in its original or its extended form.”

In the our Court of Appeal in the case of Edmondson vs. Edmondson SCCA 87/97, the court, having been satisfied on the evidence that the wife/respondent had obtained a loan to facilitate the improvement in their matrimonial home and having been satisfied that she alone serviced the loan, felt that in those circumstances that fact was relevant to determine the respective interest. Once it was accepted that the loan be considered, the entitlement would be affected and the wife respondent was entitled to a greater share in the beneficial interest.

This case was distinguished in Forrest vs. Forrest 1995 (48) WIR 221 Wolfe JA (as he then was) at page 230 stated.

“As a member of the Court in Edmondson vs. Edmondson, my understanding of the dicta of Rowe P is that it was never intended to lay down a general principle of law, that where a common intention is manifest one party can by payment of the mortgage or by repayment of a loan affect the beneficial interest of the other party.....Once the interests of the parties are defined at the

time of acquisition, it my view that the unilateral action of one party cannot defeat or diminish the proportions in which the parties hold the property. The payment to redeem the mortgage cannot then diminish or increase the proportions in which the parties intended to hold at time of acquisition.”

This extract is taken in its entirety to summarily address any assertions on the part of the applicant in this case that the payment of the mortgage entitles him to a greater interest.

In any event neither party has presented me with that the evidence which convinces that firstly Mrs. Wallace could not or did not repay Mr. Wallace parts of the mortgage directly although all of it could then have come from his salary. Secondly, the evidence also failed to convince me that Mr. Wallace did not in any contribute to the expansion work that was done, whether directly or indirectly.

In short on what was presented I am satisfied that the original intention and interest when the property was acquired remains unchanged.

Hence it is hereby declared:-

- (1) That the applicant/husband is entitled to 50% of the beneficial interest in the property and the respondent/wife is entitled to 50%.
- (2) That the property be valued and that either party be at liberty to purchase the share of the other, the option to be exercised within one year of receiving a valuation.

Alternately

- (3) That the property be sold on the open market by private treaty or by public auction and the net proceeds be divided in the proportion declared in respect of each i.e 50-50.

In any event it is ordered.

- (4) The cost of the valuation is to be borne by each party equally.
- (5) If either fail to agree to a valuation the registrar of the Supreme Court is empowered to appoint a valuator to determine the value of the premises.
- (6) If either party or both parties fail or refuse to sign the transfer pursuant to agreement for sale of the said premises the Registrar of Supreme Court be empowered to sign all documents necessary to effect a registrable transfer.
- (7) Each party to bear his or her own cost.
- (8) There is liberty to apply.