

11/11/09

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2008 HCV 01821

BETWEEN	DALFEL WEIR	CLAIMANT
AND	BEVERLEY TREE Also known as BEVERLY WEIR	DEFENDANT

Ms. Yvonne Ridguard for Claimant
with Claimant.

Mrs. Judith Cooper-Batchelor instructed by Chambers and Bunny for Defendant
with Defendant.

**HEARD IN CHAMBERS: 18TH NOVEMBER, 2009, 27TH
NOVEMBER, 2009 - CAV**

CORAM: D. O. MCINTOSH, J.

The Claimant by way of Fixed Date Claim Form seeks the following Orders:

(I) A declaration that the Claimant is solely beneficially entitled to ALL THAT parcel of land containing a dwelling house thereon, being the lot numbered 9 on the approved sub-division plan part of Norwich in the parish of Portland, prepared by F. G. Nembhard, Commissioned Land Surveyor from survey done June of 1999 and being part of the lands registered at Volume 899 Folio 23 of the Registered Book of Titles by virtue of a contractual licence given to the Claimant by Defendant, her then husband, she having promised him that she intended to

Defendant, her then husband, she having promised him that she intended to give him the said lot 9 and encouraged him to expend significant sums to build a dwelling house thereon and the defendant would be unjustly enriched if allowed to retain the beneficial interest in the said lot 9 with the dwelling house thereon **or in the alternative.**

- (II) A declaration that the Claimant and the Defendant are beneficially entitled in equal shares to **ALL THAT** Parcel containing a dwelling house thereon, being the lot numbered 9 on the approved subdivision plan part of Norwich in the parish of Portland, prepared by F. G. Nembhard, Commissioned Land Surveyor from survey done in June of 1999 and being part of the lands registered at Volume 899 Folio 23 of the Register Book of Titles, (hereinafter referred to as "the family home") pursuant to Section 6 of The Property (Rights of Spouses) Act **and**
- (iii) That Claimant be given a right of first refusal to buy the Defendant's Interest if any, in the family home, provided the Claimant exercised his said right of first refusal within six (6) calendar months of the date hereof **and**
- (iv) At the time of the sale of the aforesaid premises, a valuation report of the family home shall be obtained by an agreed Valuator by the parties or alternatively, by a Valuator appointed by the court,

The Defendant is an American National who met the Claimant when she first visited Portland.

It seems that she fell in love with Portland and wanted to acquire land there. She also fell in love with the Claimant and they were married on the 5th January, 1987 at Boston in Portland.

Before they were married in about 1986 the Defendant bought some 6.5 acres of land at Norwich in Portland from her own resources.

The land was forested and after their marriage a wooden structure was constructed on the land using the wood harvested from trees on lands for the most part.

Claimant helped in the construction of this house which was partly on stilts and partly on elevated land.

The defendant who lived and worked in America supplied the necessary cash while the Claimant and others supplied the labour.

During periods of vacation the defendant when in Jamaica would stay on the property in the house built there until it became infested by termites (no doubt because the lumber was untreated.)

Thereafter the parties would stay at hotels whenever the defendant visited. These visits to hotels were paid for by the defendant.

In 1989, the claimant began constructing the present house. He started by replacing the stilts or supports of the wooden house with a concrete basement. Then he eventually removed the deteriorated wooden structure. He

informed the defendant that he would be constructing a concrete basement for the house.

While the Defendant did not officially participate in the building of the new structure, the claimant had been living off the land at Norwich. He would harvest and sell the lumber. He planted cash crops which he sold and utilized the funds. The defendant would send him seeds to sow and money for "pocket money" and seems to have done so whenever he requested same.

The parties never lived together in the concrete structure although the claimant avers that he built it as their matrimonial home.

The Claimant refused to go to the United States of America where defendant lived and worked and in 1995, the parties were separated.

The claimant continues to reside on the lands and utilize them for his personal use and benefit.

The defendant has been trying to get him off the lands without success.

Under cross examination the defendant volunteered that the relationship broke down because the claimant had claimed that he only wanted her for her money.

When this court asked him if that was true, he said it was not, that what he wanted was not her money, but her lands.

When re-examined by his attorney he said that he felt entitled to the land because when defendant met him she had no land. She told him he was busy

going up and down and had no land and no car. He told her not to buy a car but land on which she could stay. She bought land at his instigation. She paid the money and they both partake. He is only claiming the lot on which the concrete structure now stands because if he moved off it he will have to build another house.

There is no issue that the lands are owned solely by the defendant and that they were paid for by her before the parties were married. There is no issue that she did not give him any land.

This court does not accept the assertion of claimant that from his own resources and with the consent and encouragement of the defendant he built the concrete structure because she promised she would give him the portion of the lands on which dwelling house was built.

This court is of the view that resources used to build the house came directly or indirectly from the defendant who was told that the original house was being refurbished.

At the time the house was built the land was not subdivided and no particular area of land had any number or demarcation. The subdivision came after the divorce proceedings and lot 9 could not have been in contemplation before the concrete structure was in place.

The evidence in this case clearly demonstrate that the claimant's interest in the defendant was a monetary one which cemented his desire to acquire her lands.

The defendant had never indicated any interest or desire to give claimant lands or any part of lands she had purchased. She was never hesitant in giving him her money.

The only property which could be said to have been acquired by the couple during their marriage was the house built on the lands. It follows therefore, that the only interest that could accrue to the claimant would be one (1) half of the value of the dwelling house on the land.

This dwelling house has been valued by the reputable firm of the D. C. Tavares and Finson Realty Company Ltd., at \$2,600,000.

This court will enter judgment for claimant in the sum of \$1,300,000 with interest at 3% from the 3rd June, 2008 to the 27th November, 2009.

This court will make no order as to costs.