

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. E153/83

|         |                |                  |
|---------|----------------|------------------|
| BETWEEN | ESMIN WILLIAMS | PLAINTIFF        |
| A N D   | GEORGE BREARY  | FIRST DEFENDANT  |
| A N D   | CYNTHIA BREARY | SECOND DEFENDANT |

Donna Parchment instructed by Milholland, Ashenheim and Stone for the Plaintiff.

Hiloca McNeil for the Defendants.

Hearing in Chambers on: 23rd January, 1984

Delivered on: 25th January, 1984

JUDGMENT

Bingham J:

By Originating Summons filed in this matter on 25th July, 1983, the plaintiff claimed the following relief:-

1. That the plaintiff is the sole proprietor of the instant property.
2. That the defendants vacate the premises forthwith.
3. That the defendants are not entitled to any compensation from the plaintiff for any work done on the property.
4. That the defendants pay the costs of the application.

The facts in this matter are not in the main in dispute although there are some areas of conflict.

From the affidavits filed in support both of the summons and the defence there emerged the following catalogue of the events leading up to these proceedings:-

1. The plaintiff and first named defendant are sister and brother and the 2nd named defendant is the present wife of the first named defendant.
2. The second named defendant with the assistance of his parents left the shores of Jamaica in 1962 to go and seek a livelihood in Britain.
3. He got married there and this marriage produced two daughters both of whom are now grown ups.
4. Things did not go as well as he had hoped for and so in 1977 some fifteen years after his departure he was back in Jamaica. His wife and younger daughter followed him soon after, some nine months later to be exact.
5. In the interim the first named defendant was sheltered by his sister, the plaintiff.
6. The first named defendant then went and rented a house to accommodate his family. The family brought their personal effects with them. They intended no doubt to resettle in Jamaica.
7. There was nowhere for the first named defendant and his family to stay at his parents home at Glengoffe in Saint Catherine. The house there was a one room board house capable of accommodating only his parents who were elderly persons. The house was also in need of repairs.
8. In 1978 with the consent of his mother who was then the joint fee simple owner of the land on which the house was situated and with the full knowledge and acquiescence of the plaintiff, the other joint owner, the first named defendant set about constructing a three bedroom

block and steel house on the land. This necessitated the old board structure being pulled down. This new house is not completed. There is still a kitchen and a dining room to be added. Varying reasons have been given as to why the completion has not taken place.

9. It was the first named defendant who provided all the cash for the erection of the dwelling. The plaintiff has stated in her affidavit that another brother provided five hundred building blocks and her husband, a carpenter by trade, and herself provided free labour and some lengths of steel respectively. As the house was intended to furnish better accommodation for the parents there is no reason to doubt that this assistance in all probability was rendered.

The first named defendant strongly denied that any such assistance was given. He contends that he did it all by himself. I do not believe that this is so. I accept the plaintiff's account.

10. The house reached to its present stage in 1978. The first named defendant's wife died during the construction of the house. The parents and the first named defendant and his younger daughter all moved into the house. The first named defendant got married soon after to the second named defendant and she and her young children by a previous relationship, then joined the first named defendant in the house.

11. The first named defendant then returned to Britain leaving his new family behind with his parents in the house. He returned to Jamaica frequently in 1979, 1980, 1981 remaining for a short time on each

occasion. He would like to return to settle permanently in Jamaica but he cannot because earning a livelihood here is too difficult. He has, therefore, to go to England where the opportunities for work no doubt are much better.

12. Things did not go too well at the home. By 1982 his parents had both left the house.

The mother was the first to go, in 1981. Both went to live with the plaintiff. The father died in 1983. The mother is now very ill. She has complained that the reason for their departure from the house was due to the ill-treatment they received at the hands of both defendants.

There would seem to be good grounds for believing this to be so as one cannot see any other plausible reason for this being otherwise.

13. In the interim the land has now been conveyed to the plaintiff absolutely and she has now sought to recover possession of the house in which the defendants are in occupation.

#### The Plaintiff's Position

The plaintiff through Miss Parchment is contending that the house was built by the first named defendant as a home for the sole occupation of his parents out of the gratitude and love no doubt which he bore towards them. As such it was a gift and no title, interest or equity arose in favour of the first named defendant. He was there by leave and license of the mother as part owner of the land on which the house was built. The plaintiff as the fee simple owner is now

entitled therefore to put an end to the license and retake possession of the house. This was even more so just as the very condition by which the defendant was given permission to be on the premises was breached as he had forced the parents to leave the premises. That ipso facto amounted to a breach of the agreement entitling him to be on the land in the first place. This breach gave the owner the right to terminate the license and retake possession of the premises.

The Defendants' Position

The defendants on the other hand are contending that the house was constructed not merely to provide the first named defendant's parents with a better home but also to accommodate the first named defendant and his family. He was therefore in the position not of a bare licensee but he had a license coupled with an interest in the land by virtue of his being encouraged to come upon the land and expend money towards building the house. It would be unjust therefore to allow the plaintiff to insist on her strict legal rights as the fee simple owner and turn out the defendants. Miss McNeil further submitted that as much as there may be some moral duty on the part of the first named defendant and a legal duty as well to assist in providing for his aged parents this cannot be looked at in isolation without considering the corresponding claims of the defendant's family. The effect of constructing the house as a gift to the parents would result in the plaintiff now acquiring the house to the exclusion of the first named defendant and his family.

Findings and Conclusions

On the facts it is clear that the first named defendant was permitted to erect the house on the land by his mother with the full knowledge and acquiescence of the plaintiff. The law here is clear. The authorities of *Dillwyn vs Llewellyn* [1862] 4 DEG. F.8J. 517; *Plimmer vs Wellington Corporation* [1884] 9 App. Cases 699 P.C. and *Ramsden vs Dyson* [1866] L.R. 1 H.L. 129 per Lord Kingsdown at 170 all lay down the proposition that:

"if the owner of land (and this would include a joint owner) requests another, or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a license coupled with an equity.... From *Plimmer's* case in particular, it seems that the equity arising from the expenditure need not fail 'merely on the ground that the interest to be secured has not been expressly indicated.' The Court must look at the circumstances in each case to decide in which way the equity can be satisfied."

Per Lord Denning M.R. in *Inwards vs Baker* [1965] 2 Q.B. 29 at 37.

This case cited in support of the defendants contention is when examined almost on all fours with the instant case. There is nothing from the circumstances to lead me to the conclusion that the first named defendant in constructing the house intended it as an absolute gift for his aged parents. He is still a relatively young man with children by his first marriage and he has now taken on the added burden of being responsible for other children fathered by someone else. It is therefore most unlikely that he could have intended to lay out what would have been a considerable sum of money in benefitting his parents to the entire exclusion of his immediate family and himself.

In building the house the defendant clearly must have intended to accommodate not only his parents but also his immediate family and the house was built on that understanding. As in Inwards vs Baker an equity clearly arises and all that remains is for me to see how that equity may best be satisfied.

As there is no question of any promise being made by either the mother or the plaintiff to transfer the land to the first named defendant there is no basis for an order for a transfer of the fee simple being made to the first named defendant.

On the other hand, it is clear that from the reliefs sought by the plaintiff that she is either not minded or is she in a position to offer compensation for the structure based on its market value.

Having regard to the very strained relationship between the parties, however, this course is not to be overlooked. The fact that the house was intended to provide a home for the parents and the fact that this course is now frustrated as well as the fact that the defendants have resided in the house without paying any ground rent are also factors to be taken into consideration in arriving at a just solution.

Taking all these factors into consideration therefore the equity which in my opinion clearly arises in favour of the first named defendant can best be satisfied in the following manner:-

1. That the plaintiff as the owner of the property be entitled to discharge the equity by compensating the first named defendant, such payment to be based upon the market value of the house as existing in February 1982,

the date when the first named defendant's father left the premises.

Such price to be as fixed by a competent valuator appointed by the Court.

- 2. That the first named defendant George Breary and his family to be allowed to continue in occupation of the said house until such time that the compensation is determined and paid.
- 3. Failing the payment of compensation, the defendant George Breary and his family to be permitted to remain in the said house as long as he desires to as his home and for the rest of his life.
- 4. That there be no order as to costs.