IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1988/W117

BETWEEN	LUDFORD LEAL WILLIAMS	PLAINTIFF
A N D	SHARON ANTOINETTE HENRY	DEFENDANT

Anthony Pearson for Plaintiff.

Gordon Steer instructed by Knight, Pickersgill and Dowding for Defendant.

HEARD: 12th, 13th 14th March and 1st May, 2003

COOKE, J.

By an instrument of transfer dated the 15th May, 1987 the disputed property at 42 Corrine Crescent (the house) in Edgewater, St. Catherine was conveyed to the plaintiff and defendant as joint tenants. This transfer was duly recorded in the Register Book of Titles on the 13th July, 1987 at Volume 1090 Folio 645.

The parties are now before the court for a determination of their respective beneficial interest (if any) and for the receipt of consequential orders which will follow the resolution of this dispute.

At the hearing the plaintiff contended that the entire beneficial interest in this property resided with him. The defendant submitted that she was entitled to one-half of the beneficial interest therein.

The parties were neighbours, living on Alexander Road in Kingston 13. Apparently they knew each other from the days of childhood but it was not until 1985 that they discovered a mutual attraction and became lovers. They subsequently became engaged on the defendant's birthday – the 10th of January. The plaintiff said it was in 1987 – the defendant in 1986. I accept that the engagement took place in 1986. At this time the plaintiff had two young sons and the defendant a young daughter.

There is some controversy as to the initial steps in the acquisition of the house. The plaintiff asserts that it was his solo effort. In accordance with his desire to move out of his mother's house and to own a house, he came upon 42 Corrine Crescent with a "for sale" sign. This was in the latter part of January 1987. Quite independently of the defendant, answers to his inquiries led him to the office of Playfair, Junor, Pearson and Co. Ltd., Attorneys-at-Law.

The defendant disagrees; she said that for some time they had been house-hunting. Then there appeared in a newspaper an advertisement by C.D. Alexander pertaining to the sale of the house. They went together to C.D. Alexander, who directed them to a Mrs. Joy McCalla (one of the vendors) who was awaiting them on their arrival at the house. They were told the price was One Hundred and Twenty-Five Thousand Dollars ($125,000.00). They tried to bargain but were not entertained. They were told to deal with the firm of Playfair, Junor, Pearson and Company who would deal with the issue of the purchase price. I prefer the account of the defendant. I accept that the parties had been engaged in house-hunting. It is more probable than not that in circumstances where on the

plaintiff's version they had just got engaged (January 10, 1987) he would not have secretly pursued a solo endeavour. In any event I am of the view that the defendant's evidence is the more credible.

There is further controversy as to the payment of the deposit of Nineteen Thousand Dollars ($19,000.00). The plaintiff says he provided all of this from his own resources. The defendant would have the court believe that she gave in cash Eight Thousand Dollars ($8,000.00) which were the proceeds of her 'partner draw'. This was a mere bald assertion. At this time as a school teacher at Dupont Primary she was earning some One Thousand Five Hundred and Eighty-Three Dollars ($1,583.00) per month. The plaintiff has exhibited his bank statement which showed that just before he drew his cheque for the payment of the deposit he had just about lodged sums to cover that amount. He gave a credible account as to how he had secured the funds to make the lodgment. The receipt was drawn in his name. I prefer the account of the plaintiff and it is my view that he alone was responsible for the payment of the deposit.

A mortgage was obtained to finance the balance of the purchase price for the house which was One Hundred and Six Thousand Dollars ($106,000.00). The document pertaining to this was not produced to the court but it would seem beyond dispute that both parties were signatories to this document. More will be said subsequently as to this not insignificant fact.

As already said there was the transfer of the house into the joint names of the parties on the 15th day of May, 1987. As to the occupation of the house I accept that the plaintiff first moved in somewhere in October 1987 and the

defendant not long after. Some improvements were made to the property. The plaintiff bore the brunt of the expenditure of this but the defendant did make some contribution although the plaintiff would seek to deny it. I accept that the defendant did take to the house some household furniture, which she took when she left.

The parties lived in the house until April 1988 when the defendant left. There is no agreement between the parties as to the reason for the leaving. According to the plaintiff, the defendant was engineering his demise at the hands of gunmen so that she could get the house. He recounted overhearing a telephone conversation to this effect and shots were actually fired at him. The defendant he said left the morning after the shooting. It is strange he never told the defendant about this incident. He does not know why she left. The defendant said she left because the plaintiff had become unnecessarily jealous. House keys were denied her. Whenever she went out there was the accusation of infidelity. On the day before she left she had gone out and when she returned she was subject to physical abuse. I accept the version given by the defendant and I hold that she was forced to leave the house.

Before I move on I think it is incumbent on me to say that the court frowns on the attempt by the plaintiff to demean the character of the defendant. He untruthfully said that the defendant was unemployed and he was supporting her when in fact she, having graduated from St. Joseph's Teachers' College was on the staff of Dupont Primary. He had her having an abortion which was not so. He accused her of setting out to have him killed. This was a disgraceful untruth.

While they lived together the question arises as to the financing of the usual household expenses. At this time there resided in the house the parties, the defendant's young daughter and the plaintiff's two young sons. The plaintiff contends that he discharged all the financial commitments as regards the house. He alone paid the mortgage. There was no helper and he did the cooking. The defendant said that she paid the water bill and the helper, one Gladys Powell. She paid her $30.00 per week. As to the provision of food, that was for the plaintiff for he had two sons. She also claimed that she paid one-half of the mortgage payments. Now both parties had employment that took them away from the house. The plaintiff was a salesman with Cremo Ltd. In such circumstances the services of a helper would seem imperative. Where would the plaintiff find time to cook on a daily basis? I hold that the defendant paid the water bill and the helper. The plaintiff admitted in his evidence that he could not always meet the mortgage payments on time. Even then, when he was "short" he received no assistance from the defendant. I prefer the evidence of the defendant on this point and I hold that until April 1988 she paid one-half of the mortgage payments. This was to be the family home and to this aspect I now turn.

How is it that the defendant's name appeared on the title as a joint tenant? Let us begin with the pleadings of the plaintiff. In paragraph four (4) he avers as follows:-

> (4) The plaintiff and the defendant shared a common-law relationship and the plaintiff had the defendant's name placed on the title in order to secure the mortgage in respect of the said premises but the defendant has made no contribution towards the

> payment of the mortgage or in respect of the deposit on the purchase.

By this pleading I understand the plaintiff to be saying it was all a matter of convenience and nothing more. In his evidence this is my record:

> Her name on title because in December '86' she had told me she was pregnant. After doing preliminary transactions told her we going to have to plan future. She said get married, from then on we start making decisions – end of February early March since planning future, go all the way, that's when decide put name on title.

It is obvious that the plaintiff's evidence is not in harmony with the pleading adverted to (supra).

This is my record of the defendant's relevant evidence.

> (a) became engaged January 10, 1986. Made plans to get married and own a home – went house-hunting, looked in Patrick City, Havendale – off Molynes Road, also Edgewater, would drive around after school – ask friends-look in papers – auction or sale.
>
> (b) The plan was to live in the house as man and wife with family.

I understand in (b) supra that 'with family' meant with their respective children. In respect of the evidence of the plaintiff just mentioned, I do not accept that part pertaining to him being told of a pregnancy being the catalyst which prompted what he says was his reason for putting her name on the title. I hold that in December 1986 she never told him that she was pregnant. When she did in fact get pregnant was in 1988. The evidence directs me to the conclusion that having become lovers, the parties had a common intention to purchase a home for

themselves and their respective children – a family home. This common intention existed at the time of the conveyance of the house into their joint names

Who provided the purchase money for the house? I have already found that the plaintiff alone paid the deposit. However, there was a mortgage. The parties mortgaged the house in order to secure funds to purchase the house. Thus both parties contributed to the purchase price of the house. Although, as I have remarked previously, the mortgage document was not exhibited, I think I can safely assume that the defendant was fixed with responsibility for the debt incurred by way of the mortgage.

In determining the respective interests of the parties in these circumstances they should be treated in the same way as if they were married. I adopt the words of Lord Denning M.R. in ***Bernard v. Josephs*** [1982] 3 All E.R.162 at p.167f:

> "In my opinion in ascertaining the respective shares, the courts should normally apply the same considerations to couples living together (as if married) as they do to couples who are truly married. The shares may be half and half or any such other proportion as in the case appears to be fair and just".

The starting point in ascertaining the respective shares in the house is the intention of the parties as to the beneficial ownership at the time when it is bought. In ***Bernard v. Josephs*** (supra) at p. 170 j Griffiths L.J. has this to say:

> "It emerges clearly from the speeches in ***Petitt v. Petitt*** and ***Gissing v. Gissing*** that it is the intention as to the beneficial ownership at the time the house is bought that is crucial and the contributions made by the parties to the acquisition that is crucial to establish that intention: See ***Pettit v. Pettit*** [1969] 2 All E.R. 385, at 394, 400, 408; [1970]

A.C. 777 at 800, 807, 816 per Lord Morris, Lord Hodgson and Lord Upjohn; and see also ***Gissing v. Gissing*** [1971] A.C. 886 at 898, 900, 902, per Lord Morris, Viscount Dilnorne and Lord Pearson".

Our Court of Appeal has expounded a similar approach. In ***Forrest v. Forrest*** (SCCA No. 78/93 delivered April 7, 1995) Forte J.A. (as he then was) opined at p. 8:

> "Where then the common intention of the parties as to their proprietary interests can be ascertained by their conduct, the court should give effect to those intentions and declare their beneficial interest as consistent with that to which it is clear the parties intended at the time of the acquisition of the property".

Well, firstly the house was conveyed to the parties as joint tenants. This was after time and effort had been expended by both parties to find a suitable home for themselves and their children. They together took out a mortgage. The house was to be the family home. The defendant contributed, (albeit not quite as much as the plaintiff) to the improvements of the house. She, while she lived there, paid one half of the monthly mortgage payment. She paid the helper and the water bill. Their children resided with them.

Although the plaintiff alone paid the deposit it was the common intention of both parties that the house would be the family home and they would share equally in the beneficial ownership. Lord Diplock's speech in ***Gissing v. Gissing*** [1971] A.C. 886 at p.906 said:

> "As in so many branches of English Law in which legal rights and obligations depend upon the intentions of the parties to a transaction, the relevant intention of each

> party is the intention which was reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party".

I accept this exposition as correct. In this case the common intention was manifest.

Now, the plaintiff has repaid almost all debt incurred by the mortgage. How does this affect the beneficial ownership? It does not. In ***Forrest v. Forrest*** - Wolfe J.A. (as he then was) declared at p.19:

> "Once the interests of the parties are defined at the time of acquisition it is my view that the unilateral action of one party cannot defeat or diminish proportions in which the parties hold property. The payment to redeem the mortgage cannot therefore diminish or increase the proportions in which the parties intended to hold at the time of acquisition. In the redemption of the mortgage the respondent must be regarded as having made a loan to the appellant to the extent of his proportion of the interest in the property. That amount is a debt recoverable on the order for accounts to be taken, made by the judge".

So although there was a common intention that each party should have an equal beneficial interest in the house there was also a common obligation to pay the debt incurred as a result of the mortgage. It would seem therefore that since the plaintiff has discharged more than the financial burden he was obliged to bear he is entitled to a contribution from the defendant. This is known as equitable accounting

Before I make consequential orders I wish to note that at present the plaintiff does not occupy the house. It is his evidence that the house is now rented. This factor has influenced me in making the order for sale.

In conclusion I now make the following orders:

(1) The beneficial ownership in the house is held equally as between the parties.

(2) The house is to be sold. The court allows three months from the date hereof for sale by private treaty. This means within three months there should be a concluded agreement for sale failing which the house is to be sold by public auction by auctioneers agreed to by the parties. The name of the auctioneers shall be given to the Registrar of the Supreme Court within two weeks of the expiry of the three months allotted for private treaty negotiations.

(3) Each party shall receive one-half of the net proceeds of sale.

(4) From the net proceeds of the defendant's share she is to pay to the plaintiff one half of the mortgage payments made by him after she left the house. The Registrar of the Supreme Court will be responsible for this accounting exercise.

(5) The Registrar of the Supreme Court is empowered to sign all documents relevant to the execution of these orders if either party neglects, fails or refuses so to do.

(6) There will be no order as to costs.