

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.189 OF 1997

BETWEEN:

KENLYN SMITH

Plaintiff

and

MONIQUE BROWNE

Defendant

Appearances:

Mr AF Williams for the Plaintiff

Ms ? Horne for the Defendant

2000: February 15,17

JUDGMENT

[1] MITCHELL, J: By a specially endorsed writ issued on 3 June 1997, the Plaintiff claimed that she had had an intimate relationship with Lennus Bailey, deceased, from the year 1970. She had had 2 children for him. They were Cheyenne Smith born in 1971 and Eushkay born in 1976. The Plaintiff and the deceased had lived in a common law relationship at Georgetown in the Plaintiff's aunt's house until 1980 when the Plaintiff had emigrated to the USA. During the common-law relationship, the Plaintiff had laboured tirelessly to assist the deceased in building a house on land owned by the deceased. On the completion of the house, the Plaintiff had emigrated to the USA where she was later joined by the deceased. The Defendant had administrated for the entire property, ignoring the interest of the Plaintiff. The Plaintiff claimed a declaration that she was entitled to a share or interest in the house; that the Grant of Letters of Administration no.10 of 1997 be

cancelled or rectified to give effect to her interest; and, an injunction to restrain the Defendant from disposing of the property. Eventually, after an application for judgment in default of defence, the Defendant filed her defence. She claimed that the deceased by his own efforts built the property. The Plaintiff had no occupation and never worked in St Vincent. The deceased had supported the Plaintiff. She had borne two children for him, in addition to two children she had had before for another father. The Plaintiff had never asserted any interest, claim, demand, or equity in the house. She had made it clear that the only arrangement she would find acceptable would be for the property to be divided equally among the deceased's 3 children. The Plaintiff's son Cheyenne now lives in the property rent free since March or April 1996.

[2] The facts as I find them are as follows. In the year 1970, the Plaintiff met Lennus Bailey, the deceased. The deceased was an ex-sailor and ex-teacher. The deceased was a bus and truck owner and driver, a man of means. He was a man of the world and older than the Plaintiff. He had sailed about the world. He had earlier had a daughter with a woman in Georgetown. That child was the Defendant in this suit. After they met in 1970, the deceased and the Plaintiff became friendly. On 21 July 1971 she gave birth to a son Cheyenne Smith. The father was the deceased, Lennus Bailey. She was at the time living in her aunt's house at Georgetown in St Vincent. She had previously had 2 children for another man. The deceased was living at his mother's house in Georgetown when they met. The relationship between the Plaintiff and the deceased continued. In 1976 the Plaintiff had another son for the deceased. He was named Eushkoy Bailey.

[3] In early 1980, the deceased commenced building his house. He had long had a piece of land at Georgetown. He had purchased it in 1965 long before he met the Plaintiff. He built his house on the land partly by self help, partly with the use of his funds, and partly with the assistance of a bank loan. By an indenture of 14 March 1980 he mortgaged the property to the St Vincent Co-operative Bank to secure the loan. The Plaintiff and her friends assisted in collecting sand and

gravel from the beach. They piled it up alongside the road, and the deceased transported it to the building site. Self help is a normal way in the community to build a house. The Plaintiff prepared food and drink for the persons who came to assist in the building of the house. Other than a bare assertion that she gave him money, she never mentioned in her evidence any particular amount of money that she contributed to the building. I do not believe her that she contributed money to assist the deceased with the building of the house. She never had any job or other source of funds. I believe that she assisted her friend and lover in the way that is usual with self help projects, by helping along with others with piling up sand and stone for use in the construction, and with cooking for the workers on weekends when the self help construction proceeded. There was no evidence of her and the deceased having any discussion of her acquiring an interest in the property as a result of this relationship.

[4] During the years that the Plaintiff and the deceased were intimate, he continued to live at home with his mother. He visited the Plaintiff at the home of her aunt at nights after work. I do not believe her that the deceased lived with her and her children as man and wife. Her own witness did not support her in this regard. The relationship between the Plaintiff and the deceased never amounted to a common-law marriage. The evidence is that the relationship was that commonly found throughout the West Indies and which the sociologists describe as a 'visiting relationship.'

[5] In the year 1981, the Plaintiff emigrated and went to live in New York. The deceased visited her twice in New York. He came first in 1982 with son Eushkoy. He stayed a month with the Plaintiff. He came back in 1984. He stayed with the Plaintiff for a few months. He then went to live with another woman. I am satisfied that if he still continued to have some sort of relationship with the Plaintiff after 1981, he also had relationships with at least one other woman. He continued to live in the United States with another woman until 1992. In 1992 he was involved in a serious car accident. As a result, he was in a coma in a nursing house for 3

years, until he died in 1995. The other woman, not the Plaintiff visited and took care of him while he was in the nursing home.

[6] When the deceased emigrated to the USA in 1984, he left his brother in charge of the property in dispute. It was rented out, and the rent paid part of the mortgage. In 1989, when the brother left St Vincent, the deceased put the Defendant in charge of the property, to see that the rents were collected and the mortgage payments were made from his account. The property was rented out to various tenants for \$450.00 a month unfurnished, and for \$600.00 furnished.

[7] After the death of the deceased, the Plaintiff spoke to a lawyer in St Vincent about administering the estate of the deceased. She was interested in her children getting their rights to their share of their father's property. On 1 February 1995 the lawyer handling the application for letters of administration wrote to the Plaintiff in New York. He informed her that the Defendant had agreed to take out letters of administration. She proposed to share the estate between herself and the son Euskay. It was apparent that at that time she did not accept that Cheyenne was her brother, the son of her father. The Plaintiff was upset at the letter from the lawyer.

[8] On 9 February 1995 she wrote in reply to the lawyer. She wrote:

I have two children by Mr Lennus Bailey (deceased) and they are both entitled to a share in the property. I would like to take whatever action is necessary to insure that my two children each get a share of the property. The only arrangement I would find acceptable would be for the property to be divided equally among Lennus' three children.

It is apparent that up to this point the Plaintiff was making no claim that she had any interest in the property of the deceased. Her explanation in evidence was that she made no claim because her name was not on the deed. She thought her

name had to be on the deed for her to make a claim for an interest. Her evidence was that until she spoke to a lawyer in 1997 and he told her something, she never thought of claiming any interest in the property. I have to observe that her claim of an interest was one that she arrived at very late in the day. It was not based on any agreement express or implied with the deceased. She had not been living with the deceased as man and wife at the time of the building of the property. She made her claim for an interest in the property of the deceased as a result of the legal advice she received in 1997. The advice she received was based on the assumption that she was in a common-law relationship with the deceased, that they had been living as man and wife. It would appear that she did not mention to the lawyer at the time of the advice in 1997 the letter of 9 February 1995 that she had written to the lawyer handling the estate for the family. That letter amounted to a clear and unambiguous disclaimer of any interest in the property on her own behalf.

- [9] On 20 March 1995 the lawyer replied to the Plaintiff's letter of 9 February. He wrote informing the Plaintiff that the Defendant had agreed that the property be shared among herself, Euskay, and Cheyenne, in equal shares. The lawyer then asked the Plaintiff for a deposit on account of fees to be remitted to him before he could commence work.
- [10] On 13 January 1997 Monique Browne obtained a Grant of Letters of Administration to the estate of Lennus Brown. The property in dispute is described in the Grant as 10,717 sq ft of land with a building thereon. It was then valued at \$153,526.50.
- [11] In 1997 Cheyenne Smith moved into the unoccupied house of the deceased. He did this with the encouragement of his mother. He did not tell his sister, the Administratrix, that he was going to move in to the house. He neither asked nor received permission from his sister. He just forced his way in. He is still staying in the house rent free and without permission. No doubt, his moving into the

property was designed to assist his mother with her claim, and to stall the process of administering the estate and dividing it among the 3 children. That same year, in June 1997, the Plaintiff issued her writ claiming an interest in the property of the deceased. This is the writ that commenced this litigation.

[12] Both the Plaintiff and the Defendant relied on the authority of the Court of Appeal case **Cupid v Thomas [1985] 36 WIR 182**. I apply the principles in that case to the facts above. I am satisfied from the evidence that the Plaintiff made no financial contribution to the building of the house on the deceased's land. There was no suggestion of, far less any evidence of, a common intention, express or implied, that the Plaintiff was to have any beneficial interest in the property of the deceased. The Plaintiff herself had no idea, until she obtained legal advice in 1997 just prior to the issue of the writ in the case, that she might claim or have any beneficial interest in the property of the deceased. The Plaintiff has no interest legal or equitable in the property of the deceased.

[13] The case is dismissed.

[14] Costs to the Defendant to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge