

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(CIVIL)

CLAIM NO: ANUHCV 2000/0056

BETWEEN:

CAVELLE KING Claimant

and

JAMES AMBROSE Defendant

Appearances:

Mr. Michael Archibald for the Claimant
Mr. Sydney Christian, Q.C for the Defendant

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2007: May 10 July 31
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JUDGMENT

[1] **Thomas J:** These proceedings were commenced on 10th February 2000 by writ of summons indorsed with statement of claim and continued under CPR 2000. The parties are Cavelle King, the Claimant and James Ambrose, Defendant.

STATEMENT OF CLAIM

[2] In the statement of claim it is pleaded that the Claimant was at all material times a shop assistant and hair dresser and is the mother of the Defendant's two children. The Defendant, on the other hand was at all material times a professional accountant employed by various large local corporation over time.

[3] It is the Claimant's case that in or about 1990 the Claimant bargained to purchase parcel 569 (registered as Registration Section: Cassada Gardens and New Winthropes; Block: 42 1894 A) from Central Housing and Planning Authority ("CHAPA") and made a down payment of \$5,000.00, a further payment of \$206.00 and a final payment of \$4,657.00 in December 1990. In this regard, the Claimant's plea is that the final payment of \$4,657.00 was part of a final payment from the Defendant. It is further contended that the title document to parcel 569 was made out in the joint names of the Claimant and the Defendant the intention being that the said document could be used as collateral security and was so used.

[4] With respect to parcel 908 (registered as Registration Section: Cassada Gardens and New Winthropes; Block 42 1894 A), it is pleaded that the said parcel is registered in the sole name of James Ambrose but was in fact funded by loans in the names of the Claimant and the Defendant. Further, with respect to the said parcel 908, the Claimant's plea is that there was an oral agreement that the title would be registered to show joint interest of the parties. Instead the title was registered in the sole name of the Defendant in breach of the oral agreement.

[5] At paragraph 9 the following is pleaded:

"9. The [Claimant] has requested the Defendant to terminate the trust he holds in relation to parcel 569 aforesaid and to make transfer to her as sole proprietor but the Defendant has consistently refused to do so.
The [Claimant] has claimed an interest in the said parcel 908 but the Defendant has denied that as he is entitled to an interest."

[6] The Claimant claims the following:

1. That it may be declared that the Claimant is the sole owner of the beneficial interest in the title registered in the joint names of as Registration Section: Cassada Gardens & New Winthropes; Block: 42 1894A Parcel: 569 in the Register Book of Titles;
2. An Order that the title be vacated by the Defendant and transferred to the [Claimant]. That the Registrar of the High Court be directed to do all matters and things as may be necessary to give effect to the Order of the Court, that is to say, the re-registration of the said parcel in the name of the [Claimant] as sole proprietor.
3. In the alternative, a declaration that the Defendant holds upon trust for the [Claimant] a one half share of the parcel of land registered parcel: 908, Parcel 908, Block: 42 1984A, Cassada Gardens & New Winthropes in the Sole name of James Ambrose and an order that the trust be severed.

4. Such further or other relief as to the Court shall seem just.

5. Costs.

DEFENCE

[7] In his defence the Defendant admits, inter alia, that the Claimant is a hair dresser and the mother of the Defendant's two children. It is further admitted that the Defendant is an accountant and was formerly employed by St. James Club but now employed by Texaco West Indies at Coolidge, Antigua.

[8] With respect to parcel 569 the Defendant says that in or about 1990 the parcel was assigned to the Claimant but the Claimant did not like its location on the hillside. It is further pleaded with respect to the said parcel 569 that at the insistence of the Defendant the said parcel was allocated to both the Claimant and the Defendant and that the down payment of \$5,000.00 and the final payment were both made by the Defendant, and denies that the said final payment was a Christmas gift to the Defendant.

[9] At paragraph 5 of the defence the Defendant admits that parcel 569 was placed in both their names, but denies that the intention for so doing was that the said title could be used to provide security for bank loans. In this connection the Defendant's contention is that the original and main intention was that it would be held by them in trust for their first child. Further, the monthly payment on the loan was \$206.00 but the final lump sum of \$4,657.00 was made to get the title and to use the title as collateral for a loan to finance the Claimant's hairdressing course at Wilfred Academy in New York.

[10] With respect to parcel 908, the Defendant pleads that this parcel was applied for in or about 1991 and that he paid the required deposit and at a later stage parcel 569 was used as security deposit for a loan to pay off the balance owed on parcel 908.

[11] At paragraph 7 of his defence the Defendant denies that there was ever any oral agreement that parcel 908 should be registered in both names. The Defendant further denies that there was any deception on his part or that the break-up of the relationship

between them had anything to do with the fact that the said parcel 908 had been placed in his name alone.

- [12] Finally, the Defendant pleads that parcel 569 was always intended to be held in trust for Janelle Ambrose, daughter of the Claimant and the Defendant and that the Defendant never had and was not intended to have any interest whatsoever in parcel 908.

SUMMARY

- [13] On the pleadings the Claimants' case may be summarized thus:
1. With respect to parcel 569, the Claimant is saying that she provided the down payment and although the Defendant provided the final payment that payment was in fact a gift. The Claimant therefore seeks to be registered as the sole proprietor of parcel 569 which is now registered in the joint names of the Claimant and the Defendant.
 2. With respect to parcel 908, the Claimant is saying that there was an agreement that this parcel, which is registered in the Defendant's sole name, would be registered in the joint names of the Claimant and the Defendant.

ISSUE

- [14] The issue for determination is whether the Claimant is entitled
- (a) to be registered as sole proprietor of parcel 569; and
 - (b) to an interest in parcel 908

EVIDENCE

CAVELLE KING

- [15] In her witness statement filed on 9th January 2003 the Claimant says that she lived in a common law union with the Defendant for several years and that this union produced two children. She says that while in the union she thought of purchasing a parcel of land (parcel 569) from CHAPA and on 12th July 1990 she made a down-payment of \$5,000.00 on the parcel. According to her the money was withdrawn from her savings account. Further payments of \$206.00 and \$4,657.00 were made in August and December 1990.

- [16] It is the testimony of the Claimant that the sum of \$4,657.00 paid was a Christmas gift to her from the Defendant which came as a result of a conversation with the Defendant concerning her desire for a Christmas gift. The Claimant also says that the title to parcel 569 was taken out in her name and that of the Defendant rather than that of her daughter as she was still a minor.
- [17] With respect to parcel 908, the Claimant says that this came about as a result of a loan of \$22,000.00 which she obtained in 1991 using the deed for parcel 569. She says that out of this amount the Defendant took out \$4,000.00 and made a down-payment on the said parcel 908. The Claimant says further that the Defendant paid off the balance of \$10,000.00 using the proceeds of a joint loan using the deed for parcel 569.
- [18] As far as the ownership is concerned, the Claimant says that the deed would be put in both names. This was not done.
- [19] According to the Claimant, the relationship and living arrangements broke down subsequently and she also says that on numerous occasions she asked the Defendant to terminate his one half interest in parcel 569 which he refused to do.
- [20] Under cross-examination by learned senior counsel, Mr. Sydney Christian, in giving evidence regarding the \$5,000.00 down payment on parcel 567, the Claimant testified thus: "I took it from the bank. I did not borrow any money from Anthony King. I did not borrow any money which the Defendant paid back. At the time of the deposit the funds used as down payment were not funds provided by the Defendant. I just paid the money."
- [21] Concerning the final payment for parcel 569, the Claimant testified that the Defendant asked her what she wanted for Christmas and she told him she wanted the balance owed on the said parcel 569. According to her, the Defendant gave her the money. She added that the land certificate reflected her name as well as that of the Defendant; but it was to be transferred to her daughter's name. The Claimant said further that the money which

the Defendant gave her was borrowed but she also did things to earn money such as braiding hair.

[22] With respect to parcel 569 it was put to the Claimant that the \$6,000.00 was borrowed by Mr. Ambrose and the balance was to be taken from his payroll. The Claimant's response was the cost of the land was \$10,000.00 and he paid the legal fees and the balance.

[23] The Claimant then went on to explain that there were funds to be used for her studies.

[24] With respect to parcel 908, the Claimant explained that the Defendant had started to pay for this parcel after the birth of their son in 1992 and then it was decided to obtain a loan to pay-off for this other piece of land. The Claimant further explained that the deed for parcel 569 was used as the security. She also added that she had a conversation with respect to the second piece of land to the effect that it could be kept in trust for our son.

[25] In re-examination the Claimant testified that she had a discussion with the Defendant and she was supposed to act as a guarantor. We also talked about holding the other piece of land in trust for her son.

JAMES AMBROSE

[26] James Ambrose, the Defendant, filed a witness statement on 30th June 2003. He says that he is an employee of Texaco West Indies Ltd in the accounts department.

[27] The Defendant says that in 1990 when the Claimant was assigned the land she did not like it and was considering declining the offer. He says that he persuaded her not to do so but instead it should be purchased on behalf of their child. This she agreed to do.

[28] At paragraph 5 of his witness statement the Defendants say this:

"5. The deposit on this parcel [parcel 569] of land \$5,000.00 was made from funds she had borrowed from her uncle to provide a Bank statement for visa purposes. I eventually refunded this sum to her so that she could repay her uncle, and this was done from monies which I had lent my brother, and which he repaid me."

- [29] With respect to the payment for parcel 569, James Ambrose says that he made all the payments and that the final payment of \$4,657.00 was not a gift to the Claimant.
- [30] As far as the second parcel, being parcel 908, is concerned the Defendant says that he applied to purchase it and used parcel 569 as security for the loan and the Claimant was required to sign as guarantor.
- [31] In commenting on the Claimant's evidence, Ambrose testified that contrary to what the Claimant said in evidence she was trying to purchase land before she came to live with him. He said further that on 12th July 1990 she came to him and told him that she had been assigned land on the hillside but she didn't have money to build on that type of land.
- [32] Under cross-examination the Defendant said that he was certain that the money for the down payment was borrowed from her cousin and which he repaid. And on further cross-examination on the matter of the down payment the Defendant maintained that he was being truthful.
- [33] With respect to parcel 908, it was put to the Defendant that the Claimant questioned him as to what he was going to do with the \$10,000.00 for which she was the guarantor and he responded by saying that he was going to buy land. The Defendant's response was that he used the money to buy land.

PARCEL 569

- [34] It is common ground that parcel 569 is registered in the names of the Claimant and the Defendant while parcel 908 is registered in the sole name of the Defendant.
- [35] In so far as parcel 569 is concerned the issue boils down to a determination as to whether the Claimant paid the down payment and the final payment though made by the Defendant was in fact a gift to the Claimant.

- [36] To the Claimant's initial credit is the fact that among the documents admitted by consent are three receipts issued by CHAPA to the said Cavelle King. These major payments must be analysed.
- [37] It will be recalled that the Claimant's evidence is that she paid the down payment from her account at ACB. But the Defendants' testimony seeks to contradict this in that he says that he provided the Claimant with the down payment which in fact came initially from her family and which he eventually repaid.
- [38] The receipt for the down payment is dated 12th July 1990. However the Defendant in commenting on the testimony of the Claimant said that she came to him on the said date and told him about the land which had been assigned to her and of her dissatisfaction with it. This is a non-sequitur having regard to the evidence on prior events.
- [39] The other factor is that the document in the supplemental core bundle is the customer's copy of a draft payable to Central Housing and Planning Authority in the amount of \$5,000.00, "B/O Cavelle King" and bearing account number 0100222601.
- [40] A further point is that by the Defendant's own admission the Claimant was seeking land before she came to live with him.
- [41] In all the circumstances the Court considers that the evidence of the Claimant is more credible; and it is therefore the determination by the Court that the down payment was made by the Claimant. In this regard the point must be made that the matter of the down payment being borrowed by the Claimant from her family lacks credibility given the other evidence in this connection. Significantly, a number of names are mentioned but the only thing connecting them to the down payment is the Defendant's evidence.
- [42] The significant and critical payment is the final payment of \$4,657.00. But while the Claimant does not doubt that the Defendant made the payment, it is her contention that it

was a Christmas gift to her. She however admitted that the Defendant had to borrow the money for the final payment.

[43] For his part this is what the Defendant said at paragraphs 6 and 8 of his witness statement:

“6. ... the final payment of \$4,657.00 was not a gift to the Claimant. It was intended as a property which would eventually be given to our daughter. The full amount was paid at this time, so that I would have this as collateral to secure a loan to enable her to get a loan to attend Wilfred Academy in New York to study hairdressing. Eventually because of the Claimant’s medical condition I had to travel to Boston to bring herself and the child back to Antigua.

8. I assert that it was always the intention that parcel 569 would be in the names of the Claimant and would be held in trust for the first child Janelle Ambrose.”

[44] In cross-examination, the Defendant testified that when parcel 569 was acquired he was concerned about his daughter’s future and denied that he was not being truthful about the final payment on parcel 569.

[45] Having regard to the subsequent use of the certificate of title to parcel 569 in terms of loans respecting the Claimant’s studies and the purchase of parcel 908, the Court is satisfied that the final payment was not a gift to the Claimant. Rather, it was in the nature of a business decision. Accordingly, there is no basis in fact or law upon which the Claimant could be registered as the sole proprietor of parcel 569.

PARCEL 908

[46] In relation to parcel 908, the Claimant’s contention gives rise to the issue of a constructive trust. The principles were re-stated in the recent case of *GRANT v EDWARDS* [1986] All ER 426 by Sir Nicholas Browne – Wilkinson VC in these terms:

“If the legal estate in the joint name is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a beneficial interest has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated: (a) that there was a common intention that both should have a beneficial interest; (b) that the Claimant has acted to his or her detriment on the basis of that common intention.”

COMMON INTENTION

[47] In the Claimant's witness statement there are strands of evidence which could be considered in the context of common intention.

[48] At paragraph 5 the Claimant speaks of a loan of \$22,000.00 for which the certificate of title to parcel 569 was used as security. She says that out of this money the Defendant took \$4,000.00 to make the down payment on parcel 908. Further, the Claimant says the balance of \$10,000.00 was paid from the proceeds of a joint loan. Again, the deed for parcel 569 was used as security.

[49] At paragraph 6 of her witness statement the Claimant says this:

"Before the deed for Parcel 908 was extracted, the Defendant and I conversed about whose name the deed for the said Parcel would be placed. It was decided that the deed would be put in both four names to reflect our joint interest in the property, with the intention to later give to our son. Thereafter, I made it a point to ask the Defendant on several occasions when he intended to extract the subject deed. His explanation each time was for the delay centered on the fact that the person dealing with the deed at the Land Registry was sick."

[50] In cross-examination the Claimant explained that she did not have a job like the Defendant, she was only involved in braiding hair and the Defendant was the only person who put money in parcel 908. In re-examination the Claimant said that she had a discussion with the Defendant at the time when she was going to act as guarantor. And according to her they talked about putting the other piece of land in trust for her son.

[51] The Defendant, at paragraph 7 and 8 of his witness statement, says the following:

"7. As far as the second parcel of land Registration section: Cassada Gardens & New Winthropes; Block; 42 1894A, Parcel 908 is concerned, I made an application to the Ministry of Agriculture. I used Parcel 569 as security for the loan and the Claimant was required to sign as guarantor. There was never any intention, express or implied, that the Claimant would have any interest in the said parcel 908. We both agreed to separately secure property for ourselves.

8. I further state that it was never intended that the Claimant would have any interest in Parcel 908.

[52] In an expansion on his witness statement, the Defendant gave this testimony:

"I am not aware of a loan of \$21,000.00. I am aware of a loan of \$12,000.00 for her to go overseas to study. The security for the loan was the certificate of title for parcel 569.

In relation to parcel 908, there was no conversation in relation to this parcel. There was no conversation about 908 being our two names. There was no conversation about joint names or in my son's name. She approached me about parcel 569 being in her sole name and I reminded her that the land was for Janelle and it will remain that way until it is transferred to her.

[53] In cross-examination the Defendant gave this testimony with respect to parcel 908: "I deny that I told her she would have an interest in the land in the same way as the other parcel was being held for Janelle."

[54] In regard to the circumstances of the \$10,000.00 loan the Defendant said this in re-examination:

"After I approached the Ministry of Agriculture for the land I made a deposit. I then approached the Permanent Secretary for permission to build on the land and I was told that I had to pay off the purchase price. I went to the bank to get the money to pay off. I had intended to use the land certificate but I was told that since her name was on the certificate she would have to guarantee the loan at ACB. I then went to her. She was only the guarantor as her name was on the certificate.

I repaid the ACB loan myself. In all the three loans they were repaid by salary deductions."

[55] In terms of the evidence to support a common intention that the Claimant would have an interest in parcel 908, there is testimony that there was a discussion after the Defendant was told that because the Defendant's name appeared on the certificate of title, she would have to guarantee the loan. But the Defendant made it plain that it was never his intention to involve the Claimant in the purchase of parcel 908. Indeed, his testimony is that he repaid this loan as well as the others. The Claimant has accepted that the Defendant alone paid for lot 908.

[56] It is therefore the determination of the Court that the Claimant has failed to show that she shared a common intention with the Defendant respecting the purchase and ownership of parcel 908.

DETRIMENT

[57] Even if the Court is wrong on the matter of common intention, there is an evidential void in terms of any detriment suffered by the Claimant in reliance on the common intention claimed.

CONCLUSION

[58] In the circumstances the Claimant's claim is dismissed. For one thing the Defendant's contribution to the purchase of parcel 569 was more than that of the Claimant (\$5,000.00 as opposed to \$4,657.00 plus legal expenses). In any event, the Defendant has maintained throughout his evidence that his intention was that parcel 569 was to be held in trust for his daughter. In terms of parcel 908 the Defendant's actions and intention are equally clear.

ORDER

[59] **IT IS HEREBY ORDERED AND DECLARED** as follows:

1. There is no basis in the evidence and the law to warrant a declaration by the Court that the Claimant is the sole proprietor of parcel 569.
2. There is no basis in the evidence and the law to give a beneficial interest in parcel 908 in favour of the Claimant.
3. The Claimants' claim is therefore dismissed.
4. There is no order as to costs.

Errol L. Thomas
Judge