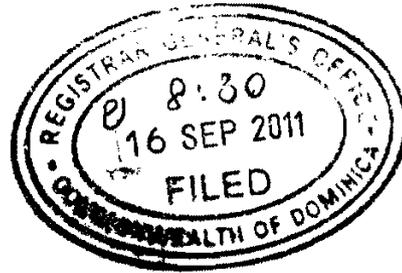


COMMONWEALTH OF DOMINICA
DOMHCV2009/0410



BETWEEN:

ROY ANDREW
and

Claimant

SUSAN HEITZ
WALTER HEITZ

Defendants

Before: The Hon. Justice Brian Cottle

Appearances:

Ms. Laurina Vidal for Claimant
Mrs. Dawn Yearwood-Stewart for Defendant

[2011: July 6th]
: September 15th

JUDGMENT

- [1] **COTTLE J:** The Claimant brought the present case seeking a declaration that certain property is held by the second Defendant on trust for the Claimant and the first Defendant as joint tenants. He also seeks a declaration the he and the first Defendant be joint tenants of all the property and business of Rainbow Village Tourism Project, a business operated on the lands owned by the second Defendant.
- [2] In his statement of claim, the Claimant alleges breach of an oral contract between himself and the first Defendant. I reproduce paragraphs 5 and 7 of the statement of claim.

By an oral agreement ("the Agreement") made in or about 1990, between the Claimant and the First Defendant, it was agreed:

- 1) That the Claimant and First Defendant would establish a tourism and hospitality business conceptualised by the Claimant**
- 2) That the said tourism and hospitality business would be established on land containing 19, 400 square feet, part of Stewart Hall at Cochrane, in the parish of St. Paul, Commonwealth of Dominica, ("the property"), which the First Defendant represented to the Claimant had been given to her by her father, the Second Defendant, and upon which the Claimant and First Defendant then lived together with two of the First Defendant's young children.**
- 3) That the business would be named "The Rainbow Village Tourism Project" (which had subsequently also been known otherwise including as "Mountain Lodge").**
- 4) That the Claimant would be primarily responsible for the conceptualisation, construction, implementation and development of the said tourism and hospitality project.**
- 5) That the Claimant would carry out necessary renovation, construction and improvements the property.**
- 6) That the First Defendant would have primary responsibility for the management to the financial affairs of the project.**
- 7) That the Claimant and First Defendant would share the profits from the said tourism and hospitality project.**

It was an express, alternatively and implied, term of the Agreement that the Claimant and First Defendant should have an equal interest in the said tourism and hospitality project.

- [3]** As against the second Defendant, the Claimant says that he knew of the development of the tourism project and gave his express or implied support and

authority to the Claimant and the first Defendant to develop the project. As a consequence of this he says a trust arises whereby the second Defendant holds the property on trust for the Claimant and the first Defendant jointly.

Breach of oral contract

The Evidence

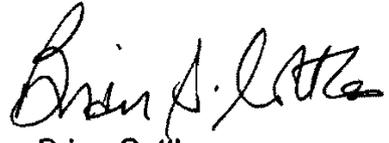
- [4] There is no written document which shows an agreement between the Claimant and the first Defendant. It is not disputed that the Claimant, who was then married, met the first Defendant. A relationship developed and the Claimant moved to live with the first Defendant at the property owned by the second Defendant. This, according to the Claimant, was in 1990 when he was 21 years old.
- [5] When he went on the property there were two houses. Both needed repairs. The Claimant says he advised the Defendant to renovate the houses and convert the smaller of the two into a rental cottage to generate income. The second Defendant provided the funds for the renovation. The Claimant assisted the workmen. He adds that he would constantly get guests for the cottage while he worked as a tour guide.
- [6] The Claimant says the funds from the second Defendant were gifts to himself and the first Defendant. The Claimant says that he then advised the first Defendant to build more cottages on the premises. Over a period of some 12 years the property was developed by the addition of more cottages. The Claimant employed and paid the workers but all the money to do so was remitted by the second Defendant. Two witnesses called by the Claimant testified that they worked on the construction of the project under the direction of the Claimant. They received their wages from the hand of the Claimant.
- [7] Brochures and business cards for the business bore both the names of the Claimant and the first Defendant. The Claimant also dealt with agencies such as the National Development Corporation on behalf of the project. Advertisements for the project named the first Defendant as the owner/manager
- [8] The First Defendant filed a witness statement. She says that the property was purchased by her father in 1982. She began living on the property that same year. In 1990 the Defendants conceived the project. The First Defendant came up with the name and the Second Defendant agreed to finance the project.
- [9] In 1992 she met the Claimant. An intimate relationship developed. He moved into the property with the First Defendant and her two children from a previous marriage. The

Second Defendant continued to remit funds to finance the project which was developed over a period of years. The First Defendant denies any agreement oral or otherwise to share any profits of the business. She says that she had to account to her father the Second Defendant as he was the owner and investor in the business.

Findings

- [10] The court found no satisfactory evidence to show the existence of an oral contract whose terms could be definitively established. The actions of the parties are equivocal at best. It is by no means certain that a man who assists his common law spouse in running a business while it is the earnings of that business on which the family depends for support, thereby clearly shows that there was an agreement to share the profits of the business equally. The fact that there were business cards with both names merely shows that this was a matter of convenience- not contract.
- [11] Fortifying me in my view is the testimony of the Claimant himself in cross-examination. He said, "If a woman has a business and I am living with her I playing my part wherever I go." In short I see no intention to create legal relations. This was a family arrangement and not a contract. Similarly the evidence does not demonstrate any trust on behalf of the Claimant.
- [12] For such a trust to exist the Claimant would have to show that the First Defendant freely made him an unambiguous assurance that he relied on to his detriment. Such an assurance must have been intended to affect the legal relations between the parties. If the Claimant is able to show this, the court will not allow the Defendant to act inconsistently with the assurance given.
- [13] I have carefully considered the evidence of the Claimant. At its highest he says that the First Defendant told him that the Second Defendant had given the property to her. While they lived together as husband and wife, the First Defendant told him that the profits would be shared between them. That evidence does not rise to the standard required to create any beneficial interest in the business or the land in favour of the Claimant. As indicated earlier, I view this as merely a domestic arrangement of convenience not intended to affect the legal relations of the party.
- [14] It follows then that the Claimant has failed to establish any entitlement to the business or the land involved either in the basis of a breach of contract or because of any trust founded on promissory estoppels.
- [15] The Claim is dismissed

The First Defendant is awarded prescribed costs of \$14,000.00. No order is made in relation to the Second Defendant who did not contest the claim separately.



Brian Cottle
High Court Judge

