

THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2002/0552

BETWEEN:



[1] DIANE O'NEAL
[2] DOREEN AMANDA COX nee O'NEAL
(Acting herein by their duly constituted Attorney on Record
ALTHEA ELVIRA HENRY)

Claimants

and

[1] IVAN O'NEAL

Defendant

Appearances:

Mr. S.E. Commissiong for the Claimants.

The Defendant in person.

2012: October 30
November 1, 15
2013: August 26

JUDGMENT

[1] **THOM, J:** The Claimants are the daughters of the Defendant and their Attorney on Record Mrs. Althea O'Neal. The Claimants claim that they are the owners of Lot No. 18 which is more particularly set out and described in Deed Number 1539 of 1998. They seek an injunction to restrain the Defendant from further building on a portion of Lot No. 18 and damages for trespass.

[2] The Defendant in his defence contends that Lot 18 belongs to the O'Neal Family since it was purchased with the proceeds from the sale of the matrimonial home which belonged to himself and Mrs. Althea O'Neal, and from sums provided by himself and his son Mr.

Donald O'Neal. The Defendant further contends that by virtue of an agreement between himself and Mrs. Althea O'Neal dated July 1, 2000 and registered as No. 1689 of 2002, lots Nos. 16, 17 and 18 were transferred to their seven grandchildren. In his counterclaim the Defendant contends that the Claimants hold the property on trust for him, he is entitled to remain in possession of Lots 16, 17, 18 and 19. Alternatively, he is entitled to his share in Lots 16, 17, 18 and 19.

EVIDENCE

- [3] Mrs. Althea O'Neal testified on behalf of the Claimants. The Defendant testified and Mr. Donald O'Neal testified on his behalf.

- [4] Mrs. Althea O'Neal testified that on March 16, 1990 she and the Defendant were divorced. As part of the divorce settlement she was awarded the matrimonial home at Chippenham England by the Family Court of England. At that time the matrimonial home was subject to a mortgage. In 1994 she sold the matrimonial home. After the mortgage was repaid she deposited the remainder of the proceeds of the sale into her bank account.

- [5] In 1995 she resumed a relationship with the Defendant and they agreed to remarry. She moved to Saint Vincent and the Grenadines to live with him. They lived with his relatives. In late 1999 they were still not remarried in spite of her urging Mr. O'Neal for them to do so. She decided to ask her daughter the first Claimant Ms. Diane O'Neal to assist her in building a house in Saint Vincent. Ms. Diane O'Neal advised her not to do so but after she insisted Ms. Diane O'Neal agreed to help her. She requested the Defendant to identify a parcel of land which she could purchase to build her house and he did so. In December 1995 she decided to purchase a parcel of land that she and the Defendant had inspected. In January 1996 she paid a deposit for Lots 16 and 18. Ms. Dianne O'Neal transferred the money for the purchase price of both lots 16 and 18 into her account at the then Barclays Bank. Lot No. 17 was purchased subsequently. Having spent all of her money on the purchase of the land she had no money to build a house. Mr. Ivan O'Neal agreed to sell a parcel of land at Ratho Mill which was owned by both of them, and she agreed to sell a parcel of land which she owned in Union Island and they would use the money to build a

house on Lot 18. There were difficulties in getting the land at Union Island sold. Her son Mr. Donald O'Neal agreed to lend her some money to build the house. The Deeds for Lots 16, 17 and 18 were in her name and Ms. Dianne O'Neal's. When her health declined she transferred her interest in the properties to her other daughter Mrs. Doreen Cox.

- [6] Herself and Mr. Ivan O'Neal remarried on 12th January 1996. This was after she had purchased lots 16, 17 and 18. He did not contribute to the purchase of any of the lots.
- [7] Lot 19 was purchased by Mr. Ivan O'Neal, but Mrs. Celia Hadaway did not wish to convey the land to Ivan O'Neal. As a result the Deed was registered in her name and Ms. Dianne O'Neal. She also transferred Lot 19 to Mrs. Doreen Cox.
- [8] The house on Lot 18 was built with the loan from Mr. Donald O'Neal. The Claim by Mr. Ivan O'Neal that he spent \$159,000.0 on the land is grossly exaggerated. Other than the dwelling house, the other buildings being the apartments were built without the consent of herself or the Claimants. Mr. Ivan O'Neal continued the construction of the apartments after Master Cottle (as he then was) ordered him not to do so.

DEFENDANT'S EVIDENCE

- [9] Mr. Ivan O'Neal testified that the purchase price for the lots was provided by himself, Mrs. Althea O'Neal and Mr. Donald O'Neal. The family home in the United Kingdom was sold and the proceeds were used to purchase the lots. The Deeds for the lots were to be in the name of Mrs. Althea O'Neal holding as Trustee. A family trust was to be established. Instead the Attorney prepared the Deeds in the name of Mrs. Althea O'Neal and Ms. Dianne O'Neal. Ms. Dianne O'Neal and Mrs. Doreen O'Neal-Cox did not contribute to the purchase price. The lots were not purchased before the second marriage, but a deposit on the purchase price was made before the second marriage.

- [10] Under cross-examination Mr. Ivan O'Neal testified that the house was sold for £128,000. He was entitled to fifty per cent (50%) of the purchase price. He alone paid the mortgage on the property. His wife was not working at the time. The money from the sale of the family home was transferred by Ms. Dianne O'Neal to the Barclays Account of Mrs. Althea O'Neal and Mr. Donald O'Neal. He sold a parcel of land at Ratho Mill and used part of the purchase price to pay for Lot 17.
- [11] The evidence of Mr. Donald O'Neal is that a deposit of 10% was made on lots 16, 17 and 18 in January 1996. The proceeds for the remainder of the purchase price came from the proceeds of the sale of the family home in the United Kingdom, from Mr. Ivan O'Neal and from a loan from himself. Mrs. Dianne O'Neal and Mrs. Doreen O'Neal-Cox did not contribute to the purchase price. The lands were heavily forested and Mr. Ivan O'Neal hired persons to clear the land and built a wall around it and landscaped it. In 1998 Celia Hadaway decided to sell lot 19. Mr. Ivan O'Neal purchased lot 19.
- [12] Under cross-examination Mr. Donald O'Neal testified that he contributed £24,000 to the purchase of lots 16, 17 and 18. He agreed that it was a loan to Mrs. Althea O'Neal. Ms. Dianne O'Neal who was a trustee of his Trust Fund transferred the money to the Barclays Account which was in the joint names of himself and Mrs. Althea O'Neal.

ISSUE

- [13] The issue to be determined is whether the lands are owned solely by the Claimants or whether the Defendant has an interest in any or all of the lots.

SUBMISSIONS:

- [14] Mr. S.E. Commissiong urged the Court to accept the evidence on behalf of the Claimants that the purchase price for the lots came from a loan by Mr. Donald O'Neal in the sum of ECC\$108,000.00 and from Ms. Dianne O'Neal in the sum of \$304,373.00. There is no evidence that Mr. Ivan O'Neal contributed any part of the purchase price. The sum of \$159,000.00 claimed by Mr. Ivan O'Neal is for maintenance of the property and has

nothing to do with the purchase price. Lot 19 which was purchased subsequently was purchased for \$14,858.00. Mr. Ivan O'Neal is not named as one of the purchasers.

[15] Mr. S.E. Commissiong also submitted that there is no evidence of a family trust ever being established. No evidence was led of the details of the trust, the trustees, the property and the beneficiary of the trust and the purpose of the trust.

[16] Mr. Ivan O'Neal in his submissions outlined the source of the funding for the purchase of the lands, being, from the sale of the matrimonial home, sale of a parcel of land owned by himself in the sum of \$83,871.50 and from Mr. Donald O'Neal in the sum of £24,000.00. He urged the court to find that he is entitled to a share in the property.

FINDINGS

[17] Having reviewed the evidence and the various exhibits, I find that the major difference in the evidence is the source of the purchase price for the four lots of land.

[18] It is not disputed that during the 1960's Mr. Ivan O'Neal and his wife Mrs. Althea O'Neal and their children (including the Claimants) resided in the United Kingdom. Mr. Ivan O'Neal purchased a home and he paid the mortgage. Mrs. O'Neal was gainfully employed intermittently.

[19] In 1990 Mr. and Mrs. O'Neal got divorced. I believe the testimony of Mrs. O'Neal that as part of the divorce settlement agreed by the parties, she was given the matrimonial home. Mr. O'Neal does not deny her testimony. What was put to her during cross-examination was that she did not have an order of the United Kingdom Family Court to show that she was awarded the matrimonial home as part of the divorce settlement. Mr. O'Neal exhibited the Order from the Family Court which reads as follows:-

"Before District Judge J.S. Lannie sitting at Chippenham.

Upon reading a letter from the Solicitor for the Petitioner dated the 7th January 1991 and from the Solicitor for the Respondent dated the 3rd January, 1991 and the 21st January, 1991.

IIT IS ORDERED THAT:

The Petitioner's application for Ancillary relief dated the 21st November, 1989 be adjourned generally with liberty to restore."

[20] The matrimonial home was registered in the name of both Mr. and Mrs. O'Neal at the time of the sale of the home in September 20, 1995. However, Mr. O'Neal never claimed to have received any of the proceeds from the sale. His testimony is that he was entitled to one half of the proceeds of the sale.

[21] The documentary evidence shows that the purchase price for Lots 16, 17 and 18 were paid from the joint account in the names of Mrs. O'Neal and Mr. Donald O'Neal. Mr. Donald O'Neal readily admitted that he did not contribute any money to this account other than the loan of £24,000.00. While all of the negotiations for the purchase of the lots were conducted by Mr. O'Neal and he also paid all of the sums to the Attorney, with the exception of EC\$3,000.00 at the opening of the account, all of the other deposits were sums which were transferred from Lloyds Bank and Midland Bank in the United Kingdom and from the Trust Fund of Mr. Donald O'Neal. There is no evidence which shows that Mr. O'Neal was the holder or one of the holders of the account in the United Kingdom from which the sums were transferred. Also there is no evidence to show that the proceeds from the sale of the matrimonial home were deposited into this account.

[22] I do not believe the evidence of Mr. O'Neal that the proceeds of the sale of his property at Ratho Mill was used to pay for lot 17. There is no evidence that Mr. O'Neal transferred any sums into the joint account. As stated earlier the documentary evidence shows that all sums for the payment of the purchase price of Lot 17 came from the joint account.

[23] In relation to Lot 19, Mrs. O'Neal admitted during her testimony that the purchase price was paid by Mr. O'Neal. However, Mrs. Hadaway did not wish to sell the land to Mr. O'Neal as a result the land was registered in the names of Mrs. Althea O'Neal and Ms. Diane O'Neal.

- [24] Having regard to the evidence I find that Mr. O'Neal did not contribute to the purchase price of lots 16, 17 and 18. The £24,000 transferred from Mr. Donald O'Neal's trust fund was a loan to Mrs. Althea O'Neal. Mr. Donald O'Neal admitted this in his evidence and he also made this very clear in his letter to Mrs. Althea O'Neal dated 20th September 1999. Mr. O'Neal paid the full purchase price for Lot 19.
- [25] In cases such as the case at bar, where the property is not registered in the names of both spouses, and the spouse whose name is not on the title deed is claiming a beneficial interest in the property the principle established in the legal authorities such as Abbott v Abbott¹ and Stack v Dowden² is that the party whose name is not on the title deed would have a beneficial interest in the property if there is established a constructive trust by showing that it would be inequitable for the legal owner to have the entire beneficial interest in the property.
- [26] There are two issues which the court must consider. Firstly, whether it was intended that the parties would share the beneficial interest in the property, and secondly, if yes, in what proportion they intended to share the beneficial interest. See Abbott v Abbott.
- [27] The onus of proving that the parties intended that both of them should share the beneficial interest is on the person whose name is not registered on the title deed and who is claiming a beneficial interest in the property.
- [28] In cases like the case at bar where there is no agreement between the parties that both should have a beneficial interest in the property, the court will consider the whole course of conduct of the parties including conduct such as contribution to deposit, mortgage installment, general housekeeping expenses, etc.

¹ [2007] UKPC 53

² [2007] UKHL 17

[29] Applying the law to the facts in this case, while I find that Mr. O'Neal did agree for the matrimonial home in the United Kingdom to be awarded to Mrs. O'Neal as part of the divorce settlement in 1990 when Mr. and Mrs. O'Neal entered into a common-law relationship and moved to Saint Vincent the matrimonial home was still registered in the names of Mr. and Mrs. O'Neal. I do not accept the evidence of Mrs. O'Neal in paragraph 6 of her witness statement where she states that in late 1994 she sold the matrimonial home. The documentary evidence shows that the home was not sold until September 1995 at which time both Mr. and Mrs. O'Neal were resident in Saint Vincent. They were in a common-law relationship and had agreed to be remarried. Mr. and Mrs. O'Neal were remarried on January 12, 1996. The inference to be drawn is that Mr. and Mrs. O'Neal intended to set up their matrimonial home in Saint Vincent. It is not disputed that Mr. O'Neal identified the lots to be purchased. He did all of the negotiations of the purchase price, he took all of their payments to the Solicitor and collected the receipts from Mrs. Hadaway. Mr. and Mrs. O'Neal were remarried approximately one week after the deposit of \$1,000.00 each was made on Lots 16, 17 and 18. Also the documentary evidence shows that the sums transferred to the joint account by Ms. Dianne O'Neal and which were used to pay for the land, which the Claimants contend were a gift to Mrs. O'Neal only, all of these sums were transferred after Mr. and Mrs. O'Neal were remarried. The usual inference to be drawn in such circumstance is that it was a gift to both of them. Having regard to the facts of this case, I find that the inference could be drawn. Mrs. O'Neal's testimony is that when she made the request for assistance it was after Mr. O'Neal had refused to remarry her and being a woman of high moral standards she did not wish to continue to live with him in a common law relationship. She was going to build her own house. However these circumstances changed before any assistance was provided by Ms. Dianne O'Neal. Mr. and Mrs. O'Neal agreed to remarry and were remarried a few days after the deposit of \$1,000 was paid on lots 16, 17 and 18. Mr. O'Neal identified the lots to be purchased. Mr. O'Neal did all of the negotiations, made all of the payments and collected all receipts.

[30] After the lots were purchased Mr. O'Neal expended sums to clear the land which was forested, this is not disputed. What is disputed by the Claimants is the quantum Mr. O'Neal expended in clearing and fencing the lots. Mr. O'Neal built the matrimonial home on lot 18. Mrs. O'Neal admitted that after the purchase of the lots she had no money to build a house. I do not believe her testimony in paragraph 19 of her witness statement where she stated that Mr. Donald O'Neal offered to lend her some money to build the house. Under cross-examination Mrs. O'Neal testified that she could not get her land in Union Island sold to pay for lot 17 and her son Mr. Donald O'Neal begged her to allow him to lend her some money so that she would not lose the deposit. She agreed to accept the loan. Mr. O'Neal also built an apartment on Lot 18. The evidence however does not show when construction of the apartment commenced if it was prior to or after the separation of Mr. and Mrs. O'Neal.

[31] Further, when in 1998 Mrs. Hadaway from whom the lots were purchased decided to sell lot 19, Mr. O'Neal provided the full purchase price for Lot 19. Mrs. O'Neal admitted she had no money to purchase it. Lot 19 is a strip of access road to Lots 16 and 18. It was acquired solely for the benefit of Lots 16 and 18.

[32] Also in 2002 Mr. and Mrs. O'Neal entered into an agreement which was registered as Deed No. 1689 of 2002 in which Mr. and Mrs. O'Neal agreed on how the property should be divided. In that agreement, they agreed that Mr. O'Neal should have a life interest in Lot 18 and the house, thereafter Ms. Dianne O'Neal and Mrs. Doreen O'Neal-Cox would have a life interest in Lot No. 18 and the property would be vested in Mr. and Mrs. O'Neal's seven grandchildren. Mrs. O'Neal was to have a life interest in Lots 16 and 17. A house was to be built on lot 16 for Mrs. O'Neal after the land in Union Island was sold; thereafter Ms. Dianne O'Neal and Mrs. Doreen O'Neal-Cox would have a life interest and the property would be vested in the seven grandchildren. While this agreement states that it would come into effect when the house on lot 16 was built and it is agreed by both parties that the house was not built, this agreement shows that Mrs. O'Neal acknowledged that Mr. O'Neal had a beneficial interest in the property.

- [33] Having regard to the whole course of conduct of the parties in relation to the property as outlined above, I am of the opinion that Mr. O'Neal has proved on a balance of probabilities he is entitled to a beneficial interest in lots 16, 17, 18 and 19.
- [34] The next issue for the court to consider is, what is Mr. O'Neal's share in the property?
- [35] The principle that emerges from the legal authorities such as Stack v Dowden and Abbott v Abbott is that the court should consider what shares were intended by the parties and in doing so the court should look at the parties whole course of dealing in relation to the property.
- [36] As stated earlier, the purchase price was paid from a gift of \$304,373.00 transferred by Ms. Dianne O'Neal and a loan of \$108,000.00 from Mr. Donald O'Neal and the sum of \$14,958.00 from Mr. O'Neal.
- [37] While I find that Mr. O'Neal did incur expenditure in the clearing and fencing of the land, Mr. O'Neal did not provide any evidence showing the details of the expenditure. He simply stated it was \$159,000.00. The Claimants dispute the quantum. I also take into account that Mr. O'Neal built the house on Lot 18. However, evidence of the value of the house was not adduced at trial. Photographs of the house were exhibited which shows it to be in the category of a middle income house. Having regard to the fact that Mrs. O'Neal's contribution is the gift from Ms. Dianne O'Neal which I find was a gift to both parents and the loan from Mr. Donald O'Neal and thereafter all expenses for development of the land and construction of the home were met by Mr. O'Neal, I am of the opinion that Mr. and Mrs. O'Neal are entitled to equal shares in the property.
- [38] In conclusion, I find that Mr. O'Neal is entitled to a beneficial interest in lots 16, 17, 18 and 19 and the buildings thereon. Mr. O'Neal's beneficial interest is fifty percent (50%).

[39] It is ordered:-

1. The Claimants' claim is dismissed.
2. Judgment is entered for the Defendant on the counterclaim.
3. A declaration is hereby granted that Mr. Ivan O'Neal has a fifty per cent (50%) interest in lots 16 and 18, more particularly described in Deed No. 1539 of 1998 and lot 17 more particularly described in Deed No. 1540 of 1998. Ms. Dianne O'Neal and Mrs. Doreen Amanda Cox nee O'Neal hold Mr. Ivan O'Neal's interest on trust for him.
4. A declaration is hereby granted that Mr. Ivan O'Neal has a fifty per cent (50%) beneficial interest in Lot 19, which is more particularly described in Deed No. 2959 of 1998. Mrs. Althea Elvira Henry O'Neal, Ms. Dianne Caroline O'Neal and Mrs. Doreen Amanda Cox nee O'Neal hold Mr. Ivan O'Neal's interest on trust for him.
5. The Claimants shall pay the Defendant prescribed costs pursuant to Part 65.5 of CPR 2000.


.....
Gertel Thom
HIGH COURT JUDGE