

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0097

BETWEEN:

NAOMI QUASHIE
of Georgetown

CLAIMANT

and

SYLVESTER KULINDA
of Fountain

DEFENDANT

Appearances:

Mrs. Kay Bacchus-Baptiste for the Claimant
Mr. Sten Sargeant for the Defendant

2018: March 27
June 7
June 15 [Re-Issued]

ORAL DECISION

- [1] **BYER, J.:** This claim arose between the Claimant and Defendant in relation to ownership of a property at Fountain, St. Vincent. The Claimant claimed an interest based on constructive trust or alternatively compensation for her role as common-law wife to the Defendant for a period of what she says was 28 years.

- [2] The Defendant denied any such relationship and although admitting there had been an intimate relationship with the Claimant, made it clear to the Court that any such relationship was casual, and stemmed from an employer/employee relationship, he having employed her as his domestic helper.

The Evidence

- [3] The Claimant gave evidence of the nature of the relationship and how during the early part of the relationship, she became pregnant with the Defendant's child which she lost in or about 1981. The Claimant's version of the events was that the relationship started in 1980 when she moved into rented accommodation at Campden Park with the Defendant. She testified that while at Campden Park she did not work but looked after the house for the Defendant who did not live there during the week but would come on weekends from his job at the Cumberland Station.
- [4] She further told the Court that at some point after the baby died, she migrated to Trinidad and when she left for Trinidad, she and the Defendant were in a relationship and he would call her continuously while she was in Trinidad and send her letters.
- [5] She told the Court that while in Trinidad, the Defendant wrote asking her to come back. Upon her return, the evidence was that she and the Defendant continued to reside at Campden Park until the Defendant acquired the property at Fountain where he built a house into which they both moved.
- [6] The parties resided at Fountain, during which time she had a job with the YWCA teaching Sewing at \$200.00 per month and another job with Job Skills training to teach Sewing at a monthly salary of between \$800.00 - \$900.00.
- [7] At Fountain the parties continued their intimate relationship. She told the Court and she performed domestic duties until 2014 when unhappy differences arose and the Claimant was forced to leave the home.
- [8] The Defendant, of course, had a different version of events. It was of great interest to the Court to see the painstaking steps he took to amend his witness statement with the "errors" he said it contained with regard to the dates and timing. The end result, in this Court's mind however was that the Defendant in spite of his attempts, was essentially in agreement with the majority of the events of the relationship as put forward by the Claimant.

- [9] He agreed that they lived together at Campden Park and agreed that when the Claimant returned from Trinidad she came to Campden Park to live.
- [10] He agreed that both he and the Claimant moved to Fountain and that they maintained an intimate relationship for many years.
- [11] He agreed that he gave the Claimant an allowance and although he sought to say it was payment for her domestic services, he agreed that he allowed her to retain all the rental income from the downstairs portion of the house at Fountain.
- [12] He agreed that the Claimant provided domestic assistance even though he minimized the extent of those domestic chores and the period for which they were provided.
- [13] Having assessed all the evidence and having heard and seen the witnesses, I accept on a balance of probabilities, the version of the relationship as given by the Claimant as opposed to what the Defendant stated.
- [14] I accept that this was more than a casual relationship of convenience between these people. I accept that there was some degree of seriousness to the relationship that led the Defendant to allow the Claimant to live with him in Fountain after the home was built. Additionally I find that in him giving her the rental income from the said home, I mind showed that he considered her more than a domestic helper.

Common Law Marriage

- [15] The Claimant has sought to make a claim for compensation as the common law wife of the Defendant and claimed \$100,000.00 as compensation.
- [16] It was indeed with great interest that this Court noted in the submissions of counsel for the Claimant that not one authority was proffered to establish the line of argument that this Court, without statutory underpinning was positioned to make such a finding. Several questions were presented to the Court but nothing more.
- [17] The concept of a common law marriage although accepted in local parlance is a statutorily recognised concept like marriage, from which certain entitlements flow. Despite its apparent prevalence within this jurisdiction for parties to form unions outside of legally sanctioned marriages,

the parties to these unions have very restricted rights and it is, in this Court's opinion not open to this Court or any Court within this jurisdiction to make a finding of a "common law marriage".

- [18] What I can and do find is that the Claimant and Defendant lived together in a relationship that was more than casual. That the Claimant provided services to the Defendant because she wanted to. This was her "partner" or "significant other".
- [19] I am fortified in this view by the largely uncontroverted, albeit brief evidence of the Claimant's son Otto Edwards who clearly stated he came to live with the Claimant and the Defendant for many years and considered the Defendant his step-father.
- [20] The Claimant, I accept had this as her family but unfortunately any of the terminology that could be used to describe such a relationship are without legal authority. I therefore adopt the words of counsel for the Defendant that they are nothing but a term of art¹.
- [21] I therefore decline to take any finding with regard to the nature of the relationship and dismiss the portion of the claim that seeks compensation as the "common law wife" of the Defendant.

Constructive Trust

- [22] There are two questions for the Court to determine with a view to determining whether the Claimant has established the existence of a constructive trust:
1. was it intended that the parties should share a beneficial interest in the land.
 2. that the Claimant has acted to his or her detriment on the basis of that common intention.²
- [23] The Defendant told the Court, which was not denied by the Claimant, that he alone was responsible for buying the property at Fountain. He went to the Bank in 1992 and obtained a Mortgage for the construction.
- [24] The Claimant does not aver or lead evidence that she made any contribution to the acquisition of the land but she says, we moved in together and while he paid the mortgage, I performed the "house wife" duties in the house. As the Canadian case of Loretta Ledrew v. Robert Foss³ stated

¹ Submitted by the Counsel for Defendant Para12

² Per Sir Nicolas Browne-Wilkinson VC in *Grant v. Edwards* [1986] 2 All ER 426

³ 2002CenL11 61691 NL SC TD

as per Le Blanc J, *“There is no duty at common law in equity or by statute placed upon a common law spouse to perform work or services for his/her partner. Clearly then, the work and services provided ... were not required by law and therefore the plaintiff had a reasonable expectation of receiving something in return as these services provided “a benefit to the Defendant”.*

- [25] The Claimant did not have to work to provide a valuable contribution to the Defendant. Unfortunately, no real evidence was led as to the division of labour or finances in the home save the bold assertion by the Claimant through her Counsel's submissions that she invested all her income into the home.
- [26] Subsequent to the parties moving into the house the Claimant thereafter became employed but again there was no real cogent evidence as to what she did with her income and the contention of the Defendant that they maintain separate finances remained untouched. In fact, the Claimant herself admitted to this in cross examination.
- [27] However, the Court must not lose sight of the fact that the acceptance by the Defendant of the services by the Claimant, services she was not obligated to proffer played a large part in this relationship. In fact, I do not accept she was “paid for” any such services and as such I am satisfied that this behaviour on the part of the Claimant created an interest. Additionally, having provided these services for at least 28 years before she left the house is enough in this Court's mind to accept she acted to her detriment.
- [28] There was no evidence as to what the Claimant did with her salary when she started to work, but what was clear was when she left in 2014, she had no other property and had after 28 years with the Defendant not established any financial independence. She had acquired no other property and no evidence was brought of a large plush bank account on the part of the Claimant. I therefore accept that the Claimant “significantly altered [her] position in reliance on the agreement in order to give rise to a constructive trust”⁴.

⁴ Per Blenman J. in *Norman Jarvis v. Carmella Williams* ANUHCv2008/0238 Para 48 ... Baroness Hale in *Abbott v. Abbott* Privy Council Appeal No.142/2005

[29] Although it is accepted that equality in distribution is usually what pertains where the Court finds that there was such an intention and upon which it was relied, I accept that that principle only provides a useful starting point⁵.

[30] In these particular circumstances, I accept that the contribution by the Claimant to the house and the Defendant over the 28 years cannot amount to one half or even the one third proposed by the pleadings on behalf of the Claimant. Rather, I am of the opinion that the Claimant is entitled to a 10% beneficial interest in the property. I therefore hold that the Claimant is entitled to 10% and the Defendant to 90% of the market value of the property at the time she left in 2014.

IT IS HEREBY ORDERED AS FOLLOWS:

ORDER

- [1] The Claimant is entitled to 10% of interest in the land at Fountain under Deed 1306/91.
- [2] That the Claimant shall be paid the said 10% as of the value in 2014 when she left the house.
- [3] That the Defendant shall be solely responsible for the payment of the valuation, such valuation to be produced by an agreed valuator, such agreement to be had within 21 days of today's date.
- [4] Upon the obtaining of the valuation, the Defendant shall have 90 days to pay the Claimant.
- [5] I am of the opinion that there should not be any costs consequence for other party and as such each party is to bear his or her own costs.
- [6] Liberty to apply.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar

⁵ White v. White 2001 1AC96 Honich v. Honich Civil Appeal No. 17/2002 BVI