

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2008/0277

BETWEEN:

JANE KANGAL

Claimant

and

PAUL CADETTE

Defendant

Appearances:

Eghan Modeste for the Claimant
Vern Gill for the Defendant

2011 April 13th
2012 June 21st

JUDGMENT

- [1] **Belle J:** Jane Kangal and Paul Cadette entered into a relationship in about February 1995. Between 1997 and 2001 the parties resided at the defendant's mother's house at Barnard Hill Castries. In December of 1996 the Defendant purchased a portion of land from the Housing and Urban Development Corporation (HUDC) at Carellie in the Quarter of Castries registered at the Land Registry as Parcel Number 1049B 530
- [2] After leaving Mr Cadette's mother's house the couple resided with the Defendant's sister for a short period of time before moving into the house which was built at Carrellie in 2001 when the house now the centre of the dispute in this case, though still under construction, became habitable.
- [3] A major fact in dispute is whether the parties agreed from about 1997 to build and move into a dwelling house at Carrellie together.

- [4] Ms Kangal claims that she contributed to the purchase of materials for the construction of the house directly and indirectly through loans. She also purchased furniture and groceries and other necessities for the house. Additionally the Claimant assumed the care of the Defendant's daughter and it is accepted by the parties that she even took Mr Cadette's daughter to Vieux Fort with her on weekends.
- [5] The Claimant also kept a record of a number of transactions involving the purchase of materials for the construction of the house and assisted the Defendant when he needed assistance retrieving money from the bank to travel.
- [6] In about 2007 problems developed between the parties apparently in relation to the Defendant fathering a child outside of the relationship. As a result of the obviously strained relationship the Defendant partitioned the house between April 27th and April 30th 2007 and the Claimant resided in the upstairs section while Mr. Cadette lived downstairs.
- [7] According to Ms Kangal Mr. Cadette approached her on a number of occasions asking her to resume cohabitation with him, but she rebuffed these approaches and on July 16th 2007 the Defendant asked her to leave the house. He then changed the locks on 17th July 2007 preventing her from regaining entry to the house.
- [8] After an alleged incident in which the Defendant claimed that the Claimant threatened to kill him, the defendant claims to have feared for his life, and he demanded that the Claimant leave the dwelling house. This led to the action now before the court.

Analysis of facts

- [9] Under cross examination the Jane Kangal said that she spent weekdays at the Defendant's dwelling house and spent weekends at Vieux Fort and that this was the case for most of the relationship.

- [10] She was not aware that Mr. Cadette was paying for the land before they met. She also purchased land at Grand Reviere Gros Islet between 1995 and 1996. She started to construct a house on this land in 2007 to 2008 after the couple broke up.
- [11] Ms Kangal admitted that the parties did not share a joint bank account.
- [12] The Claimant insisted that the parties had agreed to build a dwelling house on land purchased in 1997. She said that she and Paul Cadette had a discussion but she could not remember the details.
- [13] Ms. Kangal agreed that she did not select cupboards because the Defendant never agreed with what she chose. She also admitted being out of work between 2003 and 2004.
- [14] She stated that the Defendant borrowed \$15,000 from her in November 2001 and has never paid her back. But she denied receiving a monthly allowance from the Defendant.
- [15] Ms. Kangal agreed that she did not pay the workers directly during the construction of the house. However she spoke of going to the bank, handing over the cheques and giving Paul Cadette the cash.
- [16] According to Ms. Kangal both parties paid for groceries.
- [17] Ms Kangal 's evidence implies that the parties shared financial responsibilities in the form of assisting with the Defendant's trips overseas and paying insurance for the Defendant's vehicle.
- [18] Ms. Kangal said she only asked to be repaid the money borrowed when the relationship broke up.
- [19] Mr Cadette under cross examination said that the Claimant lived with him to save costs of travelling between Vieux Fort and Castries. He admitted that Ms Kangal did assist in taking care of his daughter during the relationship.

- [20] Mr. Cadette said that Ms Kangal had her drawings for the house she intended to build in Grand Riviere, Gros Islet.
- [21] He was emphatic in his assertion that there were no discussions about them building a home together. Although he admitted borrowing money from Ms. Kangal he was sure that no funds which Ms. Kangal earned were used to build the house. He was sure she did not contribute to paying the workers.
- [[22] In his evidence in chief Mr Cadette had stated that he called in loans and arranged to barter goods for construction material. The construction therefore took a long time
- [23] Mr. Cadette stated that he had repaid the loans he received from Ms. Kangal.
- [24] Mr Cadette stated that he got friends to assist him with construction of the house and this was not solely in relation to the foundation of the house. He organized "coud main" for this purpose. But Ms Kangal visited the site when he picked her up because she did not have a car at the time. She would visit about once per month with him.
- [25] He insisted that the Claimant did not buy materials for him nor pay any workers.
- [26] In relation to the receipt from Brice & Co referred to in the documents disclosed Mr. Cadette expressed doubt that this payment of \$5000.00 was for direct contribution to construction of the roof.
- [27] He denied that the only time he gave the Claimant money was when he went to Grenada and she bought a ticket for him. He also denied that the Claimant purchased groceries for the house. But he admitted that Ms. Kangal bought things for his daughter who was under her care.
- [28] Mr Cadette said that the house was never completed and that the Claimant took some of her furniture, but never asked for the remaining furniture although she asked for her share in the house.

- [29] Mr Cadette admitted borrowing money from Ms Kangal and was of the view that it had been repaid. He gave her money at times other than when he travelled. But he did not treat her as a banker for his convenience.
- [30] To remove doubt Mr Cadette said that he did not partition the house because he knew that Ms Kangal was entitled to her share. Rather, he did this because he wanted to prevent access to his part of the house. Furthermore as a result of the way the house was designed Ms. Kangal ended up with the greater part of the house.
- [31] Mr Cadette said that he believed that Ms Kangal wanted to kill him and there was an incident which confirmed this in his mind.
- [32] He reiterated that there was no agreement for them to build a home together. Mr. Cadette repeated that the Claimant was out of work for at least a year. He acknowledged that she was like a mother to his daughter.
- [33] Mr Cadette insisted that when the parties moved into the house, the house was not finished. Indeed the floor still had to be completed when they moved in. But the house was liveable. But it was not true to say that by the end of 2001 when they moved into the house the Claimant had made a direct contribution to the construction of the house.
- [34] As far as loans were concerned he had paid her back by cash and cheque.
- [35] Counsel identified the following issues arising from these facts.
- (a) Whether the Claimant and the Defendant agreed to build the dwelling house to be used as a dwelling house for themselves.
 - (b) Whether the Claimant contributed to the construction of the dwelling house and in so doing acted to her detriment.
 - (c) Whether the claimant and the defendant are joint owners of the dwelling house.

Counsel's Submissions

- [36] Counsel for the Defendant submitted that based on the evidence adduced there is nothing which can be identified as establishing a stated common intention between the parties. He argued that the Claimant's evidence on this matter is unconvincing. Counsel referred to the fact that the parties did not make any statement in relation to the Claimant's land and this should have been part of the discussions if there were any.
- [37] As far as the conduct of the parties was concerned counsel admitted that there was evidence that the Claimant lent the Defendant money to help him with the construction. But there was no suggestion from the Claimant that she contributed directly or indirectly to the construction of the house.
- [38] Counsel argued that the handling of the loan situation did not provide a clear common intention to be discerned from the conduct of the parties.
- [39] Based on these arguments, counsel submitted that there is no joint ownership of the house and that the Defendant is the sole owner of the disputed dwelling house. It was further submitted that the other orders requested cannot be made. Indeed the court cannot even find that there is money owed by the Defendant to the Claimant since there is no such claim. The Claim therefore should be dismissed with costs.
- [40] Counsel for the Claimant accused the Defendant of being untruthful based on the inconsistencies and discrepancies in his evidence. The first was in relation to the repeated assertion that he never had any discussion with the Claimant about building together or making a home for the two parties or even about the Claimant contributing to the building of the house.
- [41] Counsel argued that in spite of this statement the Defendant admitted that he borrowed money from the Claimant to assist with the construction of the house.

- [42] Counsel also argued that the statement that the Claimant never visited the work site during the construction of the house was contradicted by the admission that the Claimant visited the site once per month with him during the four year construction period.
- [43] In relation to the payment to Brice & Company for the roof he acknowledged that the Claimant spent money of her own on the house, contradicting his position that she made no direct contribution to the construction of the house.
- [44] Counsel argued that the Defendant's assertion that he repaid the Claimant's loan of \$14,000.00 was not supported by any evidence and the attempt to demonstrate payment by way of cheque was contradicted successfully by the Claimant's statement that the cheques referred to were issued for the purpose of paying for his travel expenses.
- [45] Another instance of the Defendant's untruthfulness, according to counsel, was his assertion that he paid all of the bills and provided all of the groceries. But under cross examination he had to admit that the Claimant cared for his daughter and took care of groceries and other expenses when he took her to Vieux Fort on weekends.
- [46] Counsel questioned the Defendant's explanation of the division of the house. He was of the view that the house was divided after the alleged threats and breakdown of the relationship because the Defendant knew and accepted that the Claimant had a right to joint ownership of the house.

The Law

- [47] Both Mr Gill and Mr Modest agreed that the applicable law stated simply was that in common law relationships the interest is created in equity by a stated common intention and in the absence of such a stated intention a determination based on the conduct of the parties.
- [48] Mr Modest Counsel for the Claimant Ms Kangal relied on the well-known authority of **Grant v Edwards** [1986] EWCA Civ (24th march 1986) to assert that to establish a beneficial interest in property it was required that there be evidence of a direct financial contribution to the cost of the construction of that property or a common intention, acted upon, that the party claiming the

beneficial interest should have such an interest in the property. Counsel quoted the dicta of Nourse L.J. in **Grant v Edwards** in the following terms:

"In a case such as the present, where there has been no written declaration or agreement, nor any direct provisions by the plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property. If she can do that, equity will not allow the defendant to deny that interest and will construct a trust to give effect to it."

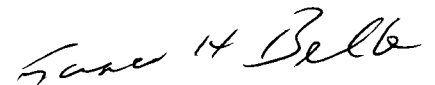
*In most of these cases the fundamental, and invariably the most difficult, question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties, almost always from the expenditure incurred by them respectively. In this regard the court has to look for expenditure which is referable to the acquisition of the house; see **Burns v Burns** (1984) Ch. 317 at pages 328H to 329C per Fox L.J. if it is found that to have incurred, such expenditure will perform the twofold function of establishing the common intention and showing that the claimant has acted upon it."*

- [49] Counsel said that there was sufficient proof of the Claimant's direct contribution to the construction of the dwelling house by way of the receipts exhibited in evidence and the alleged agreement of the parties that the house would be constructed for their joint use.
- [50] The Claimant's counsel relied on the statement of Nourse L.J. in **Grant v Edwards** to the effect that the conduct necessary to establish an equitable interest must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house.
- [51] Counsel finally submitted that the Defendant would have had to show that even if there was never an intention to give the Claimant a share in the property that his own conduct is not analogous to action taken to lead the Claimant to believe that she would have a share. Indeed evidence of this included the Defendant's behaviour after the breakdown in the relationship when he partitioned the house giving her the bigger share to use rather than asking her leave immediately because of her alleged threats.

Conclusion

- [52] I must agree with counsel for the claimant that in spite of the vagueness of the evidence there is sufficient evidence on a balance of probabilities that the Claimant was drawn into a course of conduct on an expectation that she would enjoy a share of the property.
- [53] Mr Cadette stated that throughout the relationship Ms Kangal was like a mother to his daughter. Further I find that the evidence was that there were financial contributions made to the construction of the house both directly and indirectly by Ms Kangal and there is no evidence that loans from Ms Kangal were repaid. Indeed the court accepts that they were not repaid. The handling of the loan situation by both parties is indicative that the couple shared financial responsibilities.
- [54] I accept counsel's argument that the partition of the house although not as strong as the evidence of other conduct certainly indicates that he was willing to tolerate the Claimant's presence in the house even after the relationship had broken down. From that I infer that Mr. Cadette saw her as a partner who was entitled to be there.
- [55] It is also instructive that the Claimant took no steps to improve her own property while the relationship between herself and Mr. Cadette subsisted.
- [56] I therefore conclude that there was an agreement between the parties to share the house for themselves and their children and to share expenses and assist each other from time to time.
- [57] Counsel for the Claimant questions the absence of any discussion of the use of the Claimant's land. I hold the view that the couple simply never got around to discussing that particular asset. But it was left undeveloped as a result of the focus on the house at Carellie.
- [58] Consequently I make the declarations prayed for:
- (a) I declare that the Claimant and the Defendant are the joint owners of a concrete dwelling house at Carellie in the Quarter of Castries in Saint Lucia located on Parcel Number 1049B 530.

- (b) I order that the dwelling house be valued and one party arranges to pay the other for their respective half share or alternatively that the dwelling house be sold and the proceeds of sale be divided equally between the Claimant and the Defendant.
- (c) I award Damages to be assessed for use and occupation of the dwelling house by the Defendant to the exclusion of the Claimant from July 16th 2007 the date of judgment.
- (d) I award costs to the Claimant pursuant to part 65 of the CPR 2000.


Francis H V Belle
High Court Judge