

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SUIT NO.: 468 of 2002

BETWEEN:

**MARCELLA GARRAWAY
RITA BAPTISTE**

Claimants

v

**JAMES DE ROCHE
ANELLA DE ROCHE**

Defendants

Appearances:

Mr. Arthur Williams with Ms. Roxanne Knights for the Claimants

Mr. Joseph Delves for the Defendants

2004: January 12, 15
June 7

JUDGMENT

- [1] **BLENMAN, J:** This is a claim for a declaration of dissolution of a partnership and for an order that the De Roches pay the sum of \$65,000.00 to Mrs. Marcella Garraway and Ms. Rita Baptiste.
- [2] Mrs. Marcella Garraway and Ms. Rita Baptiste (the Garraways) are two sisters who own land situate at Canouan. Mr. James De Roche and Mrs. Annella De Roche (the De Roches) are husband and wife. The families have been friends for several years.
- [3] Mr. De Roche desired to purchase a ship but did not have the money. However, he was a major shareholder in his family's company Crystal Enterprises. He applied to the National Commercial Bank for a loan in his family's name.

- [4] The National Commercial Bank granted Crystal Enterprises a loan in the sum of \$763,000 to purchase the ship but the loan was not disbursed.
- [5] The De Roches together with the Garraway's mortgaged their properties to secure the loan to purchase a ship, "The Seven Spirits" and obtained the sum of \$763,000 from the National Commercial Bank in this regard.
- [6] The Garraways allege that the De Roches requested them to contribute \$63,000 towards the price of the \$763,000 on condition that a partnership would be formed and they would be entitled to 50% of the shares in the partnership. They allege that they mortgaged their property and the Seven Spirit was bought with the moneys obtained from the loan, they felt that guaranteed only \$63,000.00 of the loan obtained.
- [7] The Garraways also allege that it was agreed that Mr. De Roche would serve as the captain of the ship and would distribute the profits between the parties. Mr. De Roche despite an agreement to permit Mr. Garraway and his son to work on the ship refused to permit the latter to do so, after Mr. Garraway fell ill, and the relationship between the parties soured. Despite several profitable trips made by the Seven Spirit, Mr. De Roche failed to give them any account of the profits or any moneys, or any dividends.
- [8] The Garraways contend that negotiations commenced to resolve the dispute between the parties and the partnership was dissolved. Several meetings were held between the parties and their solicitors and the Garraways allege that the De Roche's agreed that upon the dissolution, the Garraways would be paid the sum of \$65,000.00 and the De Roche's would arrange with the bank to have their properties released to them. They contend that the De Roche's have failed to honour the dissolution agreement despite several requests.
- [9] The Garraways seek to have the Court declare that the partnership was dissolved from the date of the meeting and that after that date the De Roches were the sole owners of the Seven Spirits. In addition, the Garraways request an order for the De Roche's to pay them \$65,000.00.

- [10] The De Roches contend that they desired to purchase a ship and were approached by Mr. Garraway to join them in the purchase.
- [11] The De Roches agree that all of the parties mortgaged properties to secure a loan of \$763,000 from the National Commercial Bank in order to purchase the ship, but deny that the Garraways contributed \$63,000.
- [12] The De Roches also deny that a partnership was formed between the parties. While they do not deny that the relationship between the parties broke down and that negotiations were commenced with a view of resolving the disputes, they are adamant that there was no agreement in relation to the dissolution of their business relationship. They state that while proposals for their payment of \$60,000 to the Garraways and for them to seek to have the National Commercial Bank release the Garraways title to them were made initially, they were strongly resisted by the Garraways.
- [13] The De Roches assert that the Garraways insisted on the continuation of their business relationship which in fact continued accordingly they were not entitled to the reliefs claimed since they are estopped from denying that the business relationship subsisted.
- [14] The issues that arise from determination are
- (a) whether the business relationship between the Garraways and De Roches was dissolved
 - (b) if so, what were the terms on which the dissolution was made.
- [15] Mrs. Marcella Garraway, her husband Mr. Robert Garraway and Mr. Gilbert Telemaque who is Ms. Rita Baptiste's Attorney on Record testified.

- [16] Mr. Garraway asserts that Mr. De Roche who they knew very well approached the Garraways to join him in a partnership to the purchase of a ship, the Seven Spirits and the parties agreed that each side would own 50% of the shares in the ship. A ship has 64 shares so they were entitled to 32 shares. They mortgaged their property to the National Commercial Bank to pay for their shares and as a result contributed \$65,000 to the purchase of the ship. The National Commercial Bank by this time had executed a loan in favour of the Crystal Enterprises a company that was wholly owned by the De Roches.
- [17] As part of the agreement Mr. De Roche who was a sea captain of several years would Captain the Seven Spirit ship (which they had all bought) and Mr. Robert Garraway and his son Angus Garraway would w

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view to resolving the dispute between the two families since his family wanted out of the partnership due to the fact that they were not given a share in the Seven Spirits as was agreed. He was unsure as to whether the agreement was put in writing, but knew of the negotiations between the two families, their solicitors and Mr. Telemaque. He did not give instructions to their solicitor Mr. Adrian Saunders to discontinue negotiations since the property belonged to Mrs. Garraway and

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[23] Mr. Gilbert Telemaque is a very qualified person who is also a business man. His evidence was that he was brought into the negotiations after Ms. Rita Baptiste requested him to do so on her behalf since she was dissatisfied with the business relationship between the Garraways and the De Roches. She had mortgaged her property in order to service a loan to purchase the Seven Spirits but contrary to her expectation and the agreement between the parties the De Roches had failed to provide her with any profits or interests share in the ship. The relationship having broken down, he negotiated on the Garraway's behalf in the discussion between the families and their solicitors. He was aware that the Garraways had mortgaged their properties and they no longer wanted to be a part of the partnership and this was clearly communicated to the De Roches. The latter who agreed to pay the Garraway's \$60,000.00 and to arrange to have the Bank release the Garraway's deed to them.

[24] During cross-examination Mr. Telemaque stated that to the best of his recollection there was some form of discussion and agreement was entered between the parties in which the sum of \$60,000 to \$65,000 would be paid to the Garraway's by the De Roche's. Later he stated that there was agreement for \$65,000.00

[25] He too never saw the mortgage document until the morning of the trial. He agrees that during the negotiations between the parties and their solicitors there were some heated exchanges. He was sure that the solicitors communicated between themselves. He agrees that Exhibit "J.D. 11" the letter dated 25th October 1995 from then Mr. Adrian Saunders Solicitor to the De Roche's lawyer indicate that the Garraways were no longer

desirous of negotiating and did not mention the De Roche's payment of any money to the Garraways. He never instructed Mr. Adrian Saunders to cease negotiations.

[26] While he was aware that Mr. Stanley John, Solicitor was retained by the Garraways he was unsure what he was writing about in the letter dated 15th July 2000 when he said that the Garraways have a massive debt since this does not accord with his view. He is of the view that the De Roches borrowed the money so they must repay it. The Garraways have made several demands of the De Roche's and they wish to retrieve their deed.

[27] Mr. James De Roche and Mrs. Anella De Roche testified on their own behalf.

[28] Mr. James is a sea captain with considerable experience. He agreed that he, his wife and son, Mrs. Marcella Garraway and Ms. Rita Baptiste mortgaged their properties to secure a loan to Crystal Enterprises in the sum of \$763,000 in order to purchase the Ship, the MV Seven Spirits. In addition, he and his wife together with Dick Vander Kamp contributed other monies towards the acquisition of the Seven Spirit since the loan was insufficient. He denied that there was any agreement with the Garraways to form a partnership and maintained that Mr. Garraway on learning that the De Roches were in the process of purchasing the ship approached them and asked to be a part of the venture.

[29] The ship commenced working and all of the moneys realized were collected by the Agent WISI Ltd in Trinidad and Tobago and London Avenue in the Dominican Republic. The agents in turn paid for wages, port charges, fuel and other operating expenses and the remainder was sent to the National Commercial Bank in accordance with a standing order that was executed by Crystal Enterprises in relation to the loan. Mrs. Marcella Garraway wanted her husband who was unqualified to serve as a captain for six months; and this caused the relationship between the parties to strain. While Mr. De Roche agrees that the relationship between the parties broke down, he denies that the breakdown was caused by his refusal to permit Mr. Angus Garraway to work on the ship after Mr. Garraway became ill. To the contrary, Mrs. Garraway abused them repeatedly without cause and on one

occasion Mr. Garraway told them that he would no longer go on the ship and neither would his son.

[30] Mr. De Roche admitted that the parties began negotiations due to the strained relations in order to resolve and sever their relationship. He states that after difficult and protracted negotiations between their solicitors a series of meetings were held and it was proposed that the De Roche's pay to the Garraway's \$60,000 and seek to have the National Commercial Bank release their deed and replace it by a deed that belonged to the De Roche family. The proposal was never accepted. The Garraways were annoyed with the proposal and their solicitors Mr. Adrian Saunders wrote indicating that he was instructed by the Garraway's to cease all negotiations on their behalf since they were no longer interested in selling their shares and blocked all attempts to have the Bank release their properties. There were no further negotiations until some months later by which time the Garraways retained the services of Mr. Stanley John, the latter who by way of letter dated 15th July 2000 wrote to the De Roche indicating that there was no agreement to dissolve the partnership.

[31] Mr. De Roche denies that the relationship between the parties was terminated as contended by the Garraways. He asserts that the Garraways are estopped from denying that the relationship was never severed as they would have the court believe. He tendered in evidence a series of letters exchanged between Dougan and Delves and Saunders and Huggins dating from 23rd January 1994 to 25th October 1995 in support of his contention. The most important letter is that dated 25th October 1995 from then Mr. Adrian Saunders to Mr. Joseph Delves in which it was stated:

"Our clients have instructed us to cease all further negotiations in relation to the sale of their shares in the captioned matter. They have advised me that they are no longer interested in disposing of their shares or their interest in the vessel. Please be advised accordingly."

[32] During cross-examination he admitted to having owned several boats included the "Anella" which was family owned and was confiscated after he was convicted for drug trafficking in France. Mr. De Roche denied knowledge of the shares of a boat even though he has been in the business for many years. The Seven Spirit was owned by Crystal Enterprises

since the bank insisted on lending its money to a company. He stated that the boat was bought for \$300,000 US and the National Commercial Bank agreed to lend them the equivalent of \$250,000.00 US if they could raise \$50,000 US. He bought the boat in Greece utilizing his money, Dick Vander Kamp's money and the moneys he obtained from the National Commercial Bank.

- [34] Mr. De Roche bought the ship "Seven Spirits" in May 1993 in the name of the company Crystal Enterprises and worked on the ship as the captain. He never told the Garraway's the amount of profit the ship was making but admitted that he was paid \$2,200 US per month while Mr. Garraway was paid, for a short time, \$1,400 U.S. The ship was registered in Saint Vincent and the Grenadines. He maintained that the Garraways and the De Roches contracted to repay the loan. Later he recanted and stated that he undertook to repay the loan from the proceeds obtained from using the ship. He stated that the mortgage was executed in September 1993. Mr. De Roche later stated that Crystal Enterprises was obligated to repay the loan but changed and said that it was the De Roches and the Garraways responsibility.
- [35] The Garraways did have an interest in the boat. The parties were negotiating in order to determine the Garraways interest but the Garraways rejected all of the proposals which their solicitors put on behalf of the De Roche's. Mr. De Roche denies that they had 50% share in the boat.
- [36] Mr. De Roche further agreed that Dick Vander Kamp lent him the \$50,000 US to pay a down-payment for the Seven Spirit. He conceded that he operated the boat for three years, and that the Garraways were not involved in the management of the boat but was sure that there was no agreement to dissolve their business relationship since he maintained that the De Roche's did not agree with the Garraways to pay them \$65,000 and get the bank to release their property. He reiterated that, like his solicitor suggested that the De Roche's paid the Garraways \$60,000 E.C. for their share and have their deed released but the Garraways rejected the proposal.

- [37] Mrs. Anella De Roche admitted under cross-examination that she was paid a salary for work she carried out as Seven Spirit's agent but could not recall how much she was paid.
- [38] This is a civil case and the standard of proof is on the balance of probabilities. The burden is on the Garraways to prove that they had a partnership.
- [39] The facts as I find them are as follows:
The De Roches wanted to purchase a boat and did not have the money to do so. They were somehow able to secure a loan for the sum of \$763,000 to buy a ship from the National Commercial Bank. The Bank preferred to disburse its money if the loan was properly secured and the De Roche's did not have enough property to secure the loan they had applied for.
- [40] The De Roches had a family company Crystal Enterprises which was a shell with no assets. The bank loaned the money to this company. As a consequence they approached the Garraways, who were their friends of several years with a business proposal which was accepted. The Garraways are simple people who are not very knowledgeable in business matters. Discussions ensued between the Garraway and the De Roches and the former were of the view that they would have been given a share in the Seven Spirit and be entitled to receive profits. They also were of the view that Mr. Robert Garraway and his son would have been permitted to work on the boat. Mr. De Roche had given them these assurances and they had no reason to disbelieve him since the two gentlemen had been friends for several years. Little did the Garraways know that Mr. De Roche had already bought the boat the Seven Spirit in the name of the company Crystal Enterprises and did not intend to have a share or legal interest in the boat.
- [41] I am not persuaded that the parties never discussed any interest or shares in the Seven Spirits as the De Roches would have me believe. I believe that Mr. De Roche agreed that the Garraways would have a share and interest in the boat and the latter feeling that it was a good venture mortgaged their family home and land together with Mrs. Garraways sister's land. However, the share or interest was not formalized but remained vague even

though the parties had a business relationship. I am satisfied that Mr. Garraway and Mr. Telemaque spoke the truth when they stated that they never saw the mortgage deed until very recently, strange as it may seem.

[42] I also believe that the De Roches set out to mislead the Garraways and exploited them for their own selfish purposes and never intended to have a real “partnership”. It is very clear that they paid themselves adequately, without paying any particular regard to the needs of the Garraways. I am not satisfied that a partnership existed between the parties.

[43] I was not at all impressed with Mr. De Roche’s honesty. He is a man of the world who has shown himself to be quite an unreliable witness. His answers were inconsistent, hesitating, and contradictory. He simply was not forthcoming. There is no doubt that his credibility is questionable. He took advantage of his less knowledgeable and experienced friends and persuaded them to mortgage their property for a venture in which he never really intended them to benefit significantly. I am satisfied that the Garraways never saw the Loan document, the mortgage deed, the Bill of Sale, nor the registration of the Seven Spirit and they were treated very unfairly by Mr. De Roche with the very able assistance of his wife Mrs. Anella De Roche.

[44] This is a very unfortunate matter and there is no doubt in my mind that the De Roche’s exploited the Garraways who at one stage wanted to sever their loose relationship. However, the Garraways seemed a bit ambivalent and retained the services of their solicitor to act on their behalf. In an effort to prevent litigations between “friends” the parties entered into negotiations to resolve the dispute. Mr. Telemaque was retained to advise the Garraways. Discussions ensued and proposals, including one for the De Roches repayment to the Garraways of \$60,000 and to arrange to have the Garraway’s title deed returned. That proposal was put to the Garraways and their solicitors. This is where the difficulty arises, having reviewed all of the evidence adduced by the Garraway’s. I am not satisfied that the proposal for the dissolution of the business relationship was accepted by the Garraway’s.

- [45] The Garraways' three witnesses were unable to state categorically what were the terms of the agreement. I believe Mr. Garraway when he stated quite candidly that the De Roches had placed the above suggestion to the Garraways and that it was the intention of the parties that the De Roche's would return to them in order for them to accept the proposal but they did not. Mr. Telemaque was unsure of the nature of the agreement and its terms; this is very unusual since he is a very intelligent man. I feel that this is so because no firm arrangement or no agreement was reached. Ms. Garraway was very unsure as to the figure she alleges the De Roche's agreed to pay neither can she recall the manner in which it was agreed to be paid. Even though she stated that the agreement was in writing it was not produced in Court. Such an important achievement like the agreement to release the deed to the only land she possesses, yet she cannot remember whether she signed the written agreement. I found it interesting that in her several efforts to have the National Commercial Bank release her title, she admitted that she had never told them of the written agreement between the De Roches and her self and her sister and worse yet, she stated that no one in her family ever notified the bank. Later she concedes that she can't remember whether the parties were only proposing, suggesting or even if the parties had come to a final position. I believe this to be true.
- [46] For what it is worth, I do not believe the Garraways when they tried to convince me that they never instructed Mr. Adrian Saunders to write the letter dated 25th October 1995 on their behalf to Mr. Joseph Delves, Solicitor indicating that they no longer desired to sell their shares or interest in the Seven Spirit. Neither do I believe that they are unfamiliar with the contents and did not instruct Mr. Stanley John to write the letter dated 18th July 2000.
- [47] In view of the foregoing, I find that Mrs. Marcella Garraway and Ms. Rita Baptiste have been unable to prove that the business relationship between themselves and the De Roches was dissolved as alleged. Accordingly Ms. Garraway and Ms. Rita Baptiste have failed to prove that the De Roche's agreed to pay them the sum of \$65,000 and to arrange to have their deeds released.

[48] Ms. Marcella Garraway and Ms. Rita Baptiste's claim fails and I will enter judgment for Mr. James De Roche and Mrs. Anella De Roche.

[49] Usually a successful litigant is entitled to have his costs; however in the exercise of my discretion and in the interest of justice, I shall order each party to bear its own costs.

[50] I commend both learned counsel for their industry.

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Louise Esther Blenman
HIGH COURT JUDGE