

**IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO: 14 OF 1995
BETWEEN:
SERENA PIERRE
AND
OSBORNE KING**

Appearances: *A.F. Williams for the Plaintiff*
 O.J.B. Dennie for the Defendant

[1998: April 23, 29]

[1998: May 5, 6]

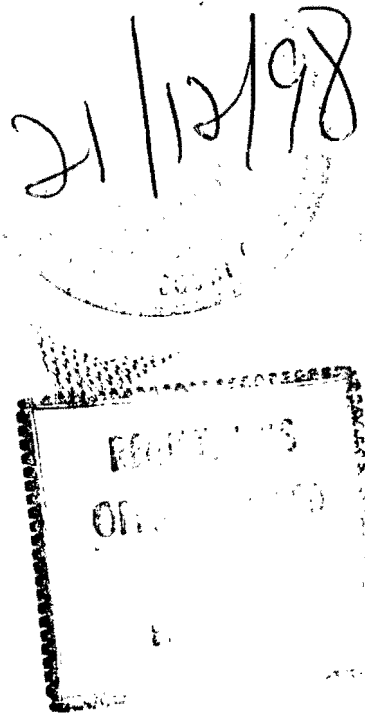
[1998: November 24th]

JUDGMENT

BAPTISTE J.

This case concerns the right to the ownership and possession of a house at Clifton, Union Island to the construction of which both litigants contributed. The plaintiff filed a writ in the High Court of Justice against the defendant on the 12th of January, 1995. The writ was endorsed with a statement of claim wherein the plaintiff claimed inter alia a declaration that she is the owner of the said dwelling house and is entitled to the quiet enjoyment of the said house; an injunction to restrain the defendant from entering or crossing her land and recovery of possession of the building in which the defendant operates his liquor and provision shop.

The plaintiff's case as gleaned from the statement of claim is that in 1985 she rented a parcel of land at Clifton, Union Island. She and her husband started to construct a concrete block dwelling house on the land. In 1991 the defendant formed an intimate relationship with her and in 1992 he assisted her with the building of the house and provided used galvanize which he obtained from



buildings that were demolished on Union Island. Apart from that used galvanize provided by the defendant, she purchased all the materials for the construction of the building. All labour costs were paid for by her. The defendant, a tradesman, gave his labour free as he had a relationship with her. The defendant went to work in St. Lucia and on his return in 1993, he lived in the house with her.

In his defence, the defendant denied that the plaintiff and her husband had started to construct a concrete block dwelling house on the land. He stated that when he met the plaintiff, she had 380 blocks on the land and had started to dig a foundation. He gave her \$100.00 to pay towards the rental of the said land (which she denies) and also paid to clean and clear the land which was overrun with bush. In paragraph 5 he stated that he purchased the materials for the building of the house from his employer on credit. He rented an excavator from his employer to cut a road to the land. He also rented from his employer a bobcat and had the use of the mixing plant and dumper to transport cement to the building site. He stated in paragraph 6 that he employed one Chris Rodney as a foreman carpenter to construct the house and Rodney employed other workers in the construction process. The defendant further stated that he alone paid the workers for the construction. He also bought electrical fittings for the house while he was in St. Lucia. He also stated in paragraph 6 that he purchased windows and doors and other materials for the house. He employed six men to work. They put on the roof, installed windows, doors, locks and plastered the building. In paragraph 10, he denied that the plaintiff purchased all the material for the construction of the house. He stated that she was impecunious. In paragraph 11 he denied that the plaintiff paid all labour costs. In paragraph 15 he stated that he paid the wages and purchased all the materials for the construction. The defendant has also counterclaimed and is claiming inter alia, a declaration that he is the owner of the said dwelling house and is entitled to the quiet enjoyment of the house, and an injunction to restrain the plaintiff from chasing him from the said house and threatening him with violence.

The plaintiff filed a reply and defence to counterclaim. Certain important admissions are made by the plaintiff in the defence to counterclaim. In paragraph 3 it is stated that the plaintiff admits that the defendant paid to have the land trimmed.

Paragraph 9 states: "The plaintiff admits that the defendant assisted with the payment of wages to the workers." Paragraph 10 states: "While the plaintiff was in St. Lucia, he sent \$1,000.00 dollars to assist with the payment of wages to the workers." Paragraph 11: "The plaintiff admits that the Defendant brought locks and electrical fittings from St. Lucia." Paragraph 12: "The plaintiff and the defendant bought windows for the building." Paragraph 13: "The defendant paid for the plastering and for putting the roof on the said house". These admissions bring to the fore the issue of the quantum of the contribution of the respective parties to construction of the house.

Before I embark on this enquiry I will state the background facts as I find them. The plaintiff is a national of St. Vincent and the Grenadines. She got married in 1979 and is still in that conjugal state. The defendant is a national of Trinidad and Tobago. He is also married. His wife lives in Trinidad. The defendant first came to St. Vincent in 1985 and worked there until 1988. He returned to St. Vincent and the Grenadines in 1991 to work with a construction company, CARES International, which was involved in the Union Island airport project. The defendant was a supervisor during the project. The airport building project started in June 1991. The defendant met the plaintiff in December, 1991. They developed an intimate relationship. That was at a time when the plaintiff's husband was in Grenada. The plaintiff has seven children and the defendant has seventeen. He did not father any of the plaintiff's children.

From 1985 the plaintiff had occupied the parcel of land on which the property, the subject matter of the present dispute, lies. The land is owned by the Crown and the plaintiff pays rent for the land. It was always the desire of the plaintiff to build a house on the land. Pursuant to that desire she collected building materials consisting of 500 blocks, three loads of pound stone, three loads of sand, one load of grit, nineteen pieces of 2 by 4 lumber and nineteen lengths of fascia board. From 1990 the foundation of the house was put in place. It was put in by the plaintiff and her husband. For two years after, no construction took place. The plaintiff resumed construction some months after she met the defendant. The defendant was foreman at the airport project and was paid a monthly tax free salary of \$2,800.00. The plaintiff was employed as a cleaner at the National Commercial Bank and received a monthly salary of \$140.00. She was also employed as a cook by R & M construction company and

was paid \$375.00 a week. The plaintiff worked at R & M construction from February 1992 to August 1992. Construction of the house commenced in September 1992. The plaintiff and her children moved into the house in October, 1993. The defendant moved in April, 1994.

Both parties gave evidence about their contributions to the construction of the house. Apart from the evidence of the plaintiff concerning the building materials she had collected she tendered in evidence two bundles of receipt (Ex. S.P. 2 and S.P. 3) including one receipt for \$1000.00 dated 10th February, 1985, for five hundred blocks. She also obtained a loan of \$3000.00 from the National Commercial Bank, dated 5th November, 1992 to assist her in buying materials for the construction process. Materials bought included blocks, nails, galvanize, cement and paint. A window was also purchased. The defendant's evidence relating to his contribution is largely supportive of what is stated in his defence and counterclaim. The defendant employed and paid the wages of all the workers engaged in constructing the house. This included the workers who put on the roof, installed the windows, doors, locks and plastered the building. He spent \$6,400.00 on workmanship. The defendant withdrew \$12,000.00 from his account in St. Lucia and purchased all the electrical fittings, locks, hinges and butts. These were purchased in St. Lucia. He flew back to Saint Vincent and purchased flush doors and sliding doors at Arnos Vale Hardware and Corea's. The defendant bought 1,700 blocks, seven hundred of which came from CARES from a package deal. From the bonus of \$17,000.00 he was to receive from CARES he got \$4,300.00. The balance going towards the payment of materials he purchased from the company. He also bought galvanize, stone, timber and cement from CARES. He tendered in evidence a bundle of receipts (Ex. O.K.1).

It is obvious that the plaintiff contributed financially to the construction of the house. Her contribution was however not as substantial as that of the defendant.

I find as a fact that the defendant made a substantial financial contribution to the construction of the house. He was also in a better financial position than the plaintiff to make that contribution. The position is correctly stated by the plaintiff when she stated in cross examination the following:

"I agree that without King's help the house wouldn't have reached where it reached. He made a substantial contribution to the building of the house."

I would assess the plaintiff's contribution at 30% and that of the defendant at 70%.

What was the intention of the parties in relation to the house? The plaintiff contends that the defendant helped her as a friend. There was never any intention or agreement that he would assume a share or an interest in the house. She stated in cross examination:

"When he helped me, he helped me build my house. He helped me as a Trinidadian. He helped me as a friend."

She also stated that he told her that he was helping her as a friend. She said his intention was to help her and that the house is hers.

The plaintiff further deposed in cross examination that: "the understanding was that both King and myself would live in the house. He came to live in 1994. I moved in in 1993".

In cross examination the defendant stated: "I start building the house in 1992. I regarded myself as having an interest in the house from September, 1992. I build the house for us."

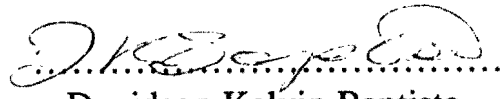
Was there on the evidence adduced any common intention that the defendant should have an interest in the house? To put it otherwise: Was there a common intention that the beneficial interest in the house should be shared? The necessary common intention can be inferred from the conduct of the parties, almost always from the expenditure incurred by them respectively. I have already assessed the defendant's contribution at 70%. The defendant, in my opinion, could not reasonably have been expected to embark upon or undertake that kind of expenditure unless he was to have an interest in the house.

Mr Williams submitted that the Court cannot make a declaration to give a person not resident in Saint Vincent any interest in real property in Saint Vincent. Counsel cited section 2, subsection (2) of the Aliens (Land Holding Regulation) Act Chapter 235 and stated that the defendant does not qualify under the Act. The short answer to Mr Williams' submission is the Privy Council's decision in *Young and Another v. Bess (1995) 46 WIR 165* where it was stated that if land is held in the name of an alien who does not have a licence to hold such, the effect

of the Aliens (Land Holding Regulation) Act is that the alien's title is voidable until such time as the Crown obtains judgment under section 5 (1) or section 16 and a bona fide purchaser from the alien is protected.

Upon considering all the evidence I do not find any difficulty in concluding that it was the common intention of the parties that the defendant would have an interest in the house. I take into account the substantial financial contribution made by the defendant. I would quantify the defendant's interest at 70 % and the plaintiff's share at 30%.

In the circumstances a declaration is granted that the plaintiff's interest in the house is 30% and the defendant's interest is 70%. It is ordered that each party is at liberty to purchase the interest of the other party. Alternatively the house is to be sold and the proceeds of sale divided between the parties in the ratio of 70% to the defendant and 30% to the plaintiff. The plaintiff is to have 30% of her costs to be taxed if not agreed. The defendant is to have 70% of his costs to be taxed if not agreed.


Davidson Kelvin Baptiste
HIGH COURT JUDGE (Ag.)