

EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHCV2010/0347

BETWEEN:

JOY LINTON

Claimant

and

ROYCE LINTON

Defendant

Appearances:

Mrs. Noelize Knight-Didier of Harris & Harris for the Claimant

Mr. Lennox Lawrence of Lennox Lawrence Chambers for the Defendant

2014: February 18th

June 26th

JUDGEMENT

- [1] **THOMAS, J.: (Ag.)** On 12th November 2010, Joy Linton, the Claimant, filed a claim form, seeking \$184,072.50 from Royce Linton, the defendant. The contention is that the amount due and owing to her arose from the sale, on 14th November 2004, of property held by both parties, as joint tenants. The property is registered in Land Title Register in Book M9 Folio 15 and situate at Morne Daniel.

- [2] In her amended statement of claim¹the claimant avers that sometime in 1989, before the parties were married, the claimant gave the defendant EC \$9,000.00 towards the purchase of the said property. The claimant avers further that the property was purchased and registered in both names following which the property was mortgaged in order to secure a joint loan for the construction of a house.
- [3] The claimant contends, that a house was constructed and both parties lived in the house as husband and wife for 14 years. The claimant also contends that the repayments on the mortgage loan were made by both parties through the defendant's savings account at the Royal Bank of Canada (RBC).
- [4] At paragraph 7 of the claimant's statement of claim it is pleaded that the property was sold in 2004 to Phillipa Bors and Jan-Antonius Bors for the price of EC\$735,000.00 which sum was paid into the defendant's savings account at RBC. A further pleading is that after pay-out of the mortgage at RBC there was a balance of EC\$443,000.00; out of which the sum of EC\$40,000.00 was made available to the claimant.
- [5] In the particulars of the claim, the claimant contends that the money received into the account of the defendant, both the defendant and the claimant were equally entitled to the whole of the purchase money remaining after the mortgage loan was paid out.
- [6] Accordingly, the claimant claims:
- (a) EC\$181,500.00
 - (b) Costs
 - (c) Such further or other relief as the court deems fit.
- [7] In his defence the defendant, after admitting paragraphs 1 of the claimant's statement of claim and denying paragraphs 2 and 3 thereof, advances the following averments: the property at Morne Daniel was purchased without any assistance from the claimant, and was purchased solely and exclusively with the defendant's resources and registered in the defendant's sole name on 21st May, 1990; sometime in March 1992 the claimant prevailed upon the defendant to transfer the property to the joint names of the claimant and the defendant; at the date of the transfer there was a caveat in favour of RBC as the property was in the sole name of the defendant; the RBC loan was negotiated in the defendant's sole name and the repayment was made without any contribution from the claimant; the house at Morne Daniel was constructed without any assistance from the claimant; there were existing liabilities on the property which had to be settled prior to the sale in November, 2004; the defendant and claimant cohabited for about 10 years at Morne Daniel but that the claimant deserted the defendant on numerous occasions during the cohabitation; the mortgage loan was paid solely and exclusively from the defendant's resources without any

¹ Filed on 23rd February 2011.

assistance from the claimant; the property had been transferred to the joint names prior to the construction of the house; the claimant did not pay for the transfer fees with respect to the property and did not contribute to the acquisition of the property; the claimant did not have ownership of half of the property and did not contribute to the value; the selling price is admitted but the money was not paid on behalf of the claimant and the defendant; it is denied that sum of \$443,000.00 was the net balance from the purchase price; the \$40,000.00 paid to the claimant was taken by the claimant without any division or contribution being paid to the defendant; and the purchase money was applied, not only towards the mortgage loan, but also in settlement of the numerous debts, borrowings and medical expenses which had been realised at the date of the sale and thereafter.

- [8] In terms net balance from the purchase price and the claimant's claim of \$181,500.00, is denied by the defendant; and contends that the sale did not result in the said amount of \$181,500.00 being payable to the defendant.
- [9] The defendant at paragraph 21 avers further that the claimant is not entitled to the reliefs claimed and should be dismissed as frivolous, vexatious and abuse of the process of the court.
- [10] Finally, at paragraph 23, the defendant contends that there are existing matrimonial proceedings between the parties, but while denying the sum claimed is payable, contends further that such sum would be characterized as matrimonial property and would more properly be the subject of an order from the division of assets.

Reply

- [11] In reply the claimant contends that
- (a) the defendant by transferring the property to their joint names, made a gift of the said property to the claimant, and as joint tenants the claimant had an equal interest in the entire property and by extension the purchase money;
 - (b) the loan was negotiated in 1991 in both names and a promissory note was signed in 1991 by both the defendant and the claimant for the amount of EC\$250,000.000 for the purpose of building a matrimonial home;
 - (c) the loan of \$250,000.00 was insufficient to complete the house and an unsecured loan of EC\$30,000.00 was taken in both names which was repaid by both parties;
 - (d) the claimant used monies from her savings and fixed deposits to finance the completion of the matrimonial home;
 - (e) there was no desertion of the defendant but there were matrimonial issues which caused the claimant to leave the matrimonial home on two occasions;
 - (f) the monthly payment on the loan was initially \$3,305.00 but later lowered to \$2,600.00; which amount could not be met wholly by the defendant and the claimant's rental income from another property was used to meet part of the monthly payment;

- (g) the defendant's contention that the balance of the purchase money was used to settle debts is neither admitted nor denied and the defendant is put to strict proof;
- (h) there was no agreement to apply the balance of the purchase money to such debts/expenses which were not noted on the certificate of title;
- (i) information from the bank and the defendant was that after the application of the purchase price to the balance of the outstanding loan account the amount of \$443,000.00 would be credited to the defendant's account;
- (j) there was no legal obligation on the claimant to maintain the defendant and no matrimonial right available to the defendant which would entitle him the legal right to her interest in the balance of the purchase monies or allow him to lawfully apply her interest in the balance of the purchase monies or allow him to lawfully apply her interest in the said monies to his own expenses without her lawful knowledge/agreement;
- (k) the claim against the defendant is for money had and received on her behalf, arose prior to and independent of the petitioner filed on 1st February, 2011.

Evidence

[12] In her witness statement Joy Linton, the Claimant, gives evidence of her marriage to the defendant and their co-habitation in the matrimonial home situate at Morne Daniel.

[13] With respect to the property in issue the following is a summary of the evidence given:

1. In 1989 \$9,000.00 was given to the defendant towards the purchase of said property; situate at Morne Daniel.
2. Initially the property was registered in the defendant's sole name.
3. Both parties negotiated a loan at the Royal Bank of Canada in the amount of \$250,000.00 for the purpose of building a matrimonial home.
4. The Certificate of Title for the property was given to the said bank to secure an equitable mortgage.
5. In 1992, being two years after the parties were married, the property was transferred to both parties as joint tenants and the bank given an equitable mortgage on the new Certificate of Title with respect to the loan obtained in 1991.
6. An unsecured loan was also obtained from National Bank of Dominica for \$30,000.00 in the names of both parties.
7. Rental income from another property as well as her salary was used to assist in the repayments.
8. The loan from the Royal Bank of Canada was serviced by both parties.
9. It is practically impossible to say who paid more money towards the mortgage loan since it depended on whether or not either of us together or individually had enough money at the end of any given month to make the payment.

- [14] It is the claimant's further evidence that both parties moved into the home in 1993 and lived there until it was sold in 2004; and that during this time the joint tenancy was not severed.
- [15] With respect to the events after the sale of the property, the claimant's evidence is that she asked the defendant for her half share of the money, but only \$40,000.00 was made available and that she continually requested the balance of the \$181,500.00 owed to her. Further that it was not paid up to 2006 when she left to study in Trinidad.
- [16] The claimant also give evidence that when she returned from her studies, the defendant was again requested to give the money owed. According to the claimant, the defendant told her he had no money. This gave rise to these proceedings.
- [17] In so far as the defendant's illness is concerned, the claimant says that despite their estrangement, they had cordial communications and that in the past 9 years she was never aware of the defendant's illness and medical bills.
- [18] Under cross-examination by learned counsel, Mr. Lennox Lawrence, Joy Linton, the Claimant, admitted that she did not have a receipt for the \$9,000.00 which she said was given to the defendant; or for the mortgage payments with respect to the land situate at Morne Daniel. And in terms of the transfer fees the witness said she could not remember if she made a contribution. In further evidence on the matter of receipts this is the claimant's testimony: "I do not have any documents to show. I do not have any documents in relation to the fixed deposits, and none in relation to my savings account. I do not have any documents to show I contributed to the \$250,000.00 loan. My salary was used over the counter. I have no passbook."
- [19] Regarding the defendant's illness which he pleaded required considerable expenditure, the witness testimony: "I have no knowledge of Mr. Linton illness. It is new to me. I know he had a bad back. I do not know of any illness that would require all these medical expenses. I do not know if the defendant had to obtain treatment for his back."
- [20] In further testimony the claimants admitted that she did not have a cordial relationship after the estrangement. The witness further admitted that she moved out of the matrimonial home for a short while on two occasions, but could not remember the dates of departure.
- [21] The claimants went on to give evidence of the vehicle which she drove during the marriage; but which she did not have after she left the matrimonial home.

Royce Linton

- [22] In terms of evidence the Defendant, Royce Linton, presented the court with a *tabula rasa*, in the sense that he did not file a witness statement; nor was a witness summary filed on his behalf. Consequently, there could be no cross-examination

Issues

- [23] The following issues arise for determination:
1. Whether the claimant is entitled to the sum of EC\$185,500.00, less \$40,000.00 from the defendant arising from the sale of the matrimonial home situate at Morne Daniel.
 2. Who is liable to pay costs

Issue No.1

Whether the claimant is entitled to the sum of EC\$185,500.00, less \$40,000.00 from the defendant arising from the sale of the matrimonial home situate at Morne Daniel

- [24] It is common ground that the following aspects of the evidence are supported by documentation or the claimant's witness statement and cross-examination:
1. The defendant owned a parcel of land situate at Morne Daniel
 2. In 1992 the defendant transferred the said land to himself and the claimant as joint tenants².
 3. The claimant and the defendant built a home on the land and lived in the said home from 1993 to 2004³.
 4. On 15th November 2004 the home at Morne Daniel was sold to Philippa Bors and Jan Antonius –Maria Bors in consideration of the sum of EC\$735,000.00⁴.
 5. There was a residue of \$443,000.00 after the bank deducted the residue of the loan taken by both parties for the building of the home.⁵
 6. The defendant paid the claimant, after the transfer of the said land, the sum of EC\$40,000.00.
 7. The claimant requested the difference between \$181,500.00 and \$40,000.00 from the defendant which was never paid.

² Memorandum of Transfer executed on 13th February, 1992 Trial Bundle 3 at page 6

³ Claimant's Witness Statement at paragraph 3-8 Trial Bundle 3 at page 37

⁴ Memorandum of Transfer of land executed on 15th November 2009

⁵ Claimants Witness Statement at para11

Submissions

- [25] At this stage it is necessary for the court to record the fact that apart from the fact that the defendant did not file a witness statement, and also there were no submissions on his behalf. This means that although the defendant filed a defence it was not substantiated by evidence apart from the Memoranda of Transfer identified above.
- [26] In submissions on behalf of the claimant, learned counsel Mrs. Noelize Knight-Didier proceeds as follows: identifies certain facts relating to the parties and the subject land; the attempt by the defendant to rely on a defence of 'set-off' in relation to the residue of the purchase money without figures or documentation; the claimant's doubts regarding the defendant's illness and the expenditure involved; and the claimant's evidence that apart from the joint debts to build the home there were no other joint debts.

- [27] The remainder of the submissions on behalf of the claimant is as follows:

"Unfortunately for the Defendant he filed no witness statement at all and had no evidence before the court to substantiate his purported defence. At trial, the Defendant through his solicitor sought to make much ado about the fact that the claimant presented no documents to support her claims of contribution to the mortgage loan or the pay-out balance on the account. However, the Defendant has not presented evidence at all to refute what the Claimant has stated in her oral evidence. She stated that she was informed by the bank that the pay-out balance was \$292,000.000. It stands uncontroverted therefore that she in fact contributed to the loan, and that the pay-out balance on the mortgage was \$292,000.00. More importantly, it does not matter whether the claimant contributed to the financing of the property or not. The property was held by the parties as joint tenants, which according to the law means each party owns all the property (Cheshire and Burn's Modern Law of Real Property: 13th ed. Pp. 208 to 209). There are no quantifiable 'shares' in the property, as may be the case with tenants in common. On the death of one party, all of the property becomes vested in the surviving owner, and there is no share of the property that passes to the deceased's estate.

The Defendant's defence therefore, is not only unsupported by any evidence whatsoever but is also bad in law.

Upon the sale of the property held by joint tenants the joint tenancy is severed and the parties are regarded as tenants-in-common, that is, with equal undivided distinct share in the property, unless otherwise materially agreed (Cheshire and Burn's Modern Law of Real Property: 13th ed. p. 211 para 3) The 'property' is now the proceeds of the sale which is simply to be divided equally.

- [28] The remainder of the submissions is summarized thus:

1. Up to the sale of the property the parties remained joint tenants of the entire property.

2. There is no evidence of written agreement between the parties severing the joint tenancy and indicating that the property was to be held as tenants-in-common in less than equal shares prior to the sale.
3. There was no agreement to transfer of either interest in the property until the sale in 2004 at which time the parties were equally entitled to the purchase money of EC\$735,000.00 and never intended otherwise.
4. Nothing in the defence dispute the pay-out balance on the mortgage secured by the property, and there is no evidence to refute the claimant's position that the balance was \$292,000.00
5. Having paid the claimant \$40,000.00 the Defendant is liable to pay the Claimant the remaining amount of her half share, being \$181,500.00 as monies had and received.
6. There should be judgment for the Claimant in the amount of \$181,500.00 less \$40,000.00 as money had and received, plus prescribed costs of \$25,187.50 and interest of 5%.

Reasoning and Conclusion

[29] Given the legal circumstances of the defendant without evidence, except the Memoranda of Transfer, there is nothing to dispute the claimant's case contained in claim form and the witness statement.

[30] The relevant law with respect to joint tenancy is also not in dispute. Indeed Gray and Gray's, **Elements of Land Law**⁶ note that joint tenancy is characterized by the presence of the 4 unities, being possession, interest, title and time.

[31] In terms of 'interest' the learned authors note as follows:

"Unity of interest follows from the proposition that each joint tenant is 'wholly entitled to the whole'. Unity of interest requires that the interest held by each joint tenant should be the same in extent, nature and duration."⁷

[32] In dealing with "Rents, profits and other compensation received from a stranger", the learned authors also note that: "within a joint tenancy each co-owner shares equally in the pecuniary gain."⁸

[33] The 4 unities are the legal principles that save the day for the claimant in the absence of any documentation to support her contention as to her contribution to the loan payments derived from the salary and rental income from another property. And as learned counsel for the claimant submits, there is no evidence of severance of the joint-tenancy, in whatever form.⁹

⁶ At paras 7.4.21 to 7.4.26

⁷ At para. 7.4.23

⁸ At para. 7.4.39

⁹ Gray & Gray, Op. Cit, at para 7.4.64. See also: Williams v Hensman [1861] 70 ER 862, 867 PER Sir W. Page Wood

Conclusion

- [34] In these circumstances where there is no evidence to contradict the claimant's contention that there was a residue of \$442,500.00 after the deduction of the mortgage debt from the purchase in May; and the claimant's contention that the defendant gave her \$40,000.00 from the residue, the court agrees the claimant is entitled to an equal share of the said residue. The amount is \$181,500.00

Costs

- [35] The claimant is entitled to prescribed cost based on the award of \$181,500.00. that amounts to \$25,188.00

ORDER

IT IS HEREBY ORDERED AND DECLARED as follows:

1. In the absence of any evidence from the defendant, except the Memoranda of Transfer the case must be determined on the basis of the said Memoranda of Transfer and the claimant's evidence.
2. The claimant and the defendant being joint tenants of the subject property are subject to the 4 unities of possession, interest, title and time.
3. With the sale of the property the parties share equally in the pecuniary gain resulting from the sale of the said property.
4. In the absence of any evidence to contradict the claimant's evidence that there was a residue of \$443,000.00 after the deduction of the mortgage debt, the claimant and defendant are entitled to an equal share of the said residue.
5. With \$40,000.00 already paid, the claimant is therefore entitled to the amount of \$181,500.00 as her equal share of the residue of the purchase money.
6. The claimant is entitled to prescribed costs in the amount of \$25,188.00.

Errol L. Thomas

High Court Judge (Ag)