In The Supreme Court of Bermuda

CIVIL JURISDICTION

2007: No. 316

BETWEEN:

TANISHA RAMPERSAD

First Petitioner

-and-

RICARDO RAMPERSAD

Second Petitioner

-v-

RUNEKCO EDWARDS

First Respondent

-and-

JENNIFER SIMMONS

Second Respondent

Dates of Hearing: 24-26 June; 16, July 2008

Date of Judgment: 7 November 2008

Ms Margaret Burgess-Howie of Wakefield Quin, for the Petitioners;
Ms Juliana Snelling of Mello Jones & Martin, for the Respondents

JUDGMENT

1. This dispute is between four family members and centres around who should be allowed to purchase "Canto", located at 53 Cobb's Hill Road, Paget (the Property).

2. The First and Second Petitioners are Tanisha and Ricardo Rampersad (wife and husband) respectively. The First and Second Respondents are Runekco Edwards (brother of Tanisha Rampersad) and Jennifer Simmons (mother of Tanisha Rampersad and Runecko Edwards).

3. On November 8, 2007, Mr and Mrs Rampersad petitioned the Supreme Court seeking an Order that they be allowed to purchase from the Respondents their interest in the property. The Respondents contend that it is they who should be allowed to buy the Petitioners' interest.

4. The parties agree that the property should not be partitioned as they cannot feasibly co-exist. In recent years there have been repeated verbal and physical altercations between them. Injuries have been sustained to individuals and there has been damage to property. The police have been called on several occasions. The Second Petitioner Ricardo Rampersad and the First Respondent Runekco Edwards have both been found guilty of offences.

5. The Petitioners and the Respondents agree that a buy-out should be based upon the Coldwell Banker, Bermuda Realty valuation of $825,000 for the property.

6. The parties agree that the issues the Court is being asked to consider are:

1. What is the value of each party's share in the property?

2. Which party should be able to buy the other party's share? The purchasing party would take possession of the whole of the property and the selling party would vacate the property.

THE LAW

7. There is a presumption in law that joint tenants in law hold the beneficiary interest as joint tenants in equity which can only be displaced by clear evidence to the contrary: See

Pettitt v Pettitt [1970] AC 777, 813 and Malayan Credit Ltd v Jack Chia-MPH Ltd [1986] AC 549, 559.

In Stack-v-Dowden [2007] UKHL 17; [2007] 2 AC 432 at 439 Lord Hope of Craighead said:

"4. The cases can be broken down into those where there is a single legal ownership and those where there is joint legal ownership. There must be consistency of approach between these two cases a point to which my noble and learned friend Lord Neuberger of Abbotsbury has drawn our attention. I think that consistency is to be found by deciding where the onus lies if a party wishes to show that the beneficial ownership is different from the legal ownership. I agree with Baroness Hale that this is achieved by taking sole beneficial ownership as the starting point in the first case and by taking joint beneficial ownership as the starting point in the other. In this context joint beneficial ownership means that the shares are presumed to be divided between the beneficial owners equally. So in a case of sole legal ownership the onus is on the party who wishes to show that he has any beneficial interest at all, and if so what that interest is. In a case of joint legal ownership it is on the party who wishes to show that the beneficial interests are divided other than equally.

"5. The advantage of this approach is that everyone will know where they stand with regard to the property when they enter into their relationship. Parties are, of course, free to enter into whatever bargain they wish and, so long as it is clearly expressed and can be proved, the court will give effect to it. But for the rest the state of the legal title will determine the right starting point. The onus is then on the party who contends that the beneficial interests are divided between them otherwise than as the title shows to demonstrate this on the facts."

And at page 454 Baroness Hale of Richmond said:

"56. Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint

beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.…"

"58. The issue as it has been framed before us is whether a conveyance into joint names indicates only that each party is intended to have some beneficial interest but says nothing about the nature and extent of that beneficial interest, or whether a conveyance into joint names establishes a prime facie case of joint and equal beneficial interests until the contrary is shown. For the reasons already stated, at least in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved.

"59. The question is, how, if at all, is the contrary to be proved? Is the starting point the presumption of resulting trust, under which shares are held in proportion to the parties' financial contributions to the acquisition of the property, unless the contributor or contributors can be shown to have had a contrary intention? Or is it that the contrary can be proved by looking at all the relevant circumstances in order to discern the parties' common intention?"

At page 455 the Court said:

"60….The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.

"61. *Oxley v Hiscock* was, of course, a different case from this. The property had been conveyed into the sole name of one of the cohabitants. The claimant had first to surmount the hurdle of showing that she had any beneficial interest at all, before showing exactly what that interest was. The first could readily be inferred from the fact that each

party had made some kind of financial contribution towards the purchase. As to the second, Chadwick LJ said this, at para 69:

> " . . . in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have - and even in a case where the evidence is that there was no discussion on that point - the question still requires an answer. It must now be accepted that (at least in this court and below) the answer is that *each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property*. And in that context, the whole course of dealing between them in relation to the property includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home." (emphasis supplied)

Oxley v Hiscock has been hailed by Gray and Gray as "an important breakthrough" (*op cit,* p 931, para 10.138). The passage quoted is very similar to the view of the Law Commission in *Sharing Homes* (2002, *op cit*, para 4.27) on the quantification of beneficial entitlement:

> "If the question really is one of the parties' 'common intention', we believe that there is much to be said for adopting what has been called a 'holistic approach' to quantification, undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended."

That may be the preferable way of expressing what is essentially the same thought, for two reasons. First, it emphasises that the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. Second, therefore, it does not enable the court to abandon that search in

favour of the result which the court itself considers fair. For the court to impose its own view of what is fair upon the situation in which the parties find themselves would be to return to the days before *Pettitt v Pettitt* [1970] AC 777 without even the fig leaf of section 17 of the 1882 Act."

At page 459 Baroness Hale said:

" 69. In law, "context is everything" and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.

"70. This is not, of course, an exhaustive list. There may also be reason to conclude that, whatever the parties' intentions at the outset, these have now changed. An example might be where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is significantly different from what they had then."

In Land Law, 4th Edition (2005), Kevin Gray and Susan Francis Gray at page 325 points out that:

"In recent years it has become increasingly clear that the process of quantification almost inevitably collapses back into something approaching an assessment of fair outcome (see *Stokes v Anderson* (1991) per Nourse LJ; *Mortgage Corpn v Shaire* (2001) per Neuberger J). The sheer unreality of spelling common intentions out of half a lifetime of inarticulate dealings is frequently so overwhelming that the courts have become 'reasonably broad-brush' in calculating the relevant proportions of beneficial entitlement behind the trust (see eg *Mollo v Mollo* (1999)). Modern courts have begun to express a distinct preference for 'the more holistic approach of looking at the parties' global dealings over the span of their ownership of the property' rather than the 'straitjacket' of a purely mathematical approach (*Le Foe v Le Foe* (2001) at [52]-[53]. This approach has now received the emphatic endorsement of the Court of Appeal in *Oxley v Hiscock* (2005)…"

In Hassell v Furbert and Furbert, Supreme Court Civil Jurisdiction 2004 No. 248 [2005] Bda L.R.22 page 1-3 Bell J. dealt with the nature of the relationship between common law and equity. In that case he said, inter alia, *"equity does not directly overrule the common law but nevertheless the Court is entitled, applying equitable considerations, to come to the conclusion that the equitable or beneficial ownership differs from the legal ownership established pursuant to a joint tenancy."* In that case although the property was conveyed to the petitioner and the respondents as joint tenants in fee simple, Bell J went "outside" of the conveyance and took into account the fact that 85% of the contribution was made by the respondents.

BACKGROUND

8. The background to this matter is taken from the agreed facts provided by Counsel together with the Court's findings of facts. I should state at the outset that whenever there is a conflict between the Petitioners' and the Respondents' version of events I prefer the evidence of the Respondents. The Respondents gave their evidence candidly and in straight forward manner. The Petitioners on the other hand were not as forthcoming and in some instances were evasive.

9. Mrs Grace Simmons, the mother of the Second Respondent and grandmother of the First Petitioner and the First Respondent, initially owned the property. She became entitled to the property in 1994 as part of her divorce settlement from the father of her daughter, the Second Respondent. It was conveyed to her in 1998.

10. I accept and find as a fact that the Respondents moved to the property in 1994.

11. In 1998 the Second Respondent, Ms Jennifer Simmons hired architect Charles Daniels to draw up plans for renovations and additions to the property: planning permission was obtained to build a new two storey, four (4) bedroom unit to be added on to the existing unit.

12. On March 28, 2001, Mrs Grace Simmons voluntarily conveyed the property in fee simple to the four parties, which in this case comprise the Petitioners and the Respondents, as joint tenants in equal shares. On May 4, 2001, the Bermuda Housing Corporation (BHC) granted a mortgage to all four joint tenants for $200,000. The funds were to be used to finance the renovations and additions to the property. The renovations resulted in a new second bedroom, a new bathroom and a new extended kitchen in the upstairs apartment and a new small front room and some tiling work to the downstairs.

13. The work, which was carried out by BHC, was not in accordance with the plans nor carried out to a satisfactory standard. Consequently, the Second Respondent, Ms Jennifer Simmons, commenced legal proceedings in the Supreme Court against BHC. The litigation settled when the BHC agreed to reduce the principal sum owing on the mortgage from $216,126.27 inclusive of accrued interest to $75,000.

14. In 1998, the Second Respondent, Ms Jennifer Simmons, suffered serious injury to her right arm in the course of her employment as a nurse aide at the King Edward Memorial Hospital (KEMH). Her injuries resulted in several years of treatment and surgery abroad at the Lahey Clinic, Burlington MA.

15. As a result of her injuries Ms Simmons brought civil proceedings in the Supreme Court, against the KEMH. The matter was settled and she received a settlement of $220,000 from KEMH together with disability payments from the Government.

16. Additionally, the Second Respondent, Ms Simmons, had a cancer tumour removed from her brain.

17. In 2004, the Respondents decided to continue with the renovations to the property. The Second Respondent, Ms Simmons, bought the materials and the First Respondent, Mr Edwards, with the help of a friend, provided the labour. The renovations led to the addition of a new bedroom, kitchen and bathroom downstairs, where the First Respondent lives, and renovations to the one (1) bedroom downstairs unit where the Second Respondent resides. As a result, a Certificate of Occupancy was issued for the downstairs unit in December 2005 and a new assessment number was issued in January 2006.

18. All parties agree that in December 2007 Bermuda Realty valued the property at $825,000. In answer to a request by the Respondents, Bermuda Realty issued a follow-up report stating that in their opinion had the Second Respondent not carried out the 2004

renovations the property would be valued at $780,000, which is $45,000 less than its current value.

19. The First Respondent has obtained an offer of financing from the Bank of Bermuda in the amount of $500,000 and has undertaken to purchase the Petitioners' share on behalf of himself and the Second Respondent based upon the $825,000 valuation. In the same way the Petitioners are also willing to buy out the Respondents' share in the property based upon the same valuation.

20. The Petitioners contend that the parties own the property in equal shares. The Respondents contend that they are entitled in equity to a greater than a half-share in the property with such amount to be determined by the Court.

21. All parties are equally liable for repayment of the mortgage and have contributed equally to it. There is presently $52,351 owing on the mortgage.

22. Ms Snelling, for the Respondents, contends that the Respondents should be allowed to buy out the Petitioners' interests because of the following:

- The property was originally owned by the father of the Second Respondent, Ms Simmons. It then became the property of the Second Respondent's mother as part of the divorce settlement between the Second Respondent's parents. Ms Simmons would be "next in line" to inherit the house and should have the benefit to enjoy this.
- Documentary evidence shows that the previous intention on the part of the grandmother had been for her daughter, the Second Respondent, to have a life interest in the property before it devolved to her children.
- The Respondents lived in the property 5 years longer than the Petitioners. This is disputed by the Petitioners but the Court accepts the evidence of the Respondents and is satisfied that this is so.

- Ms Simmons is 50 years old and chronically disabled and unemployable. She is in receipt of disability benefit and does not qualify for any borrowing.
- Ms Simmons made nearly all the effort to get the property renovated in 2001 by BHC.
- Ms Simmons got the mortgage reduced because of her lawsuit.
- Ms Simmons, with her mother's permission, located, instructed and paid most, if not all, of the fees for (Charles Daniels) the architect to draw up the plans which were used by BHC to effect the 2001 renovations.

The Petitioners submitted, *inter alia*, that they should be allowed to purchase the Respondents' share for the following reasons:

- The Petitioners are a family of 5 and purchasing a new home for them will be financially difficult. The children know of no other home and their school is just 5 minutes away from the property.
- The trauma on the family has been perpetrated by the Respondents and they maintain if they are able to buy out the Respondents they can continue occupation in peaceful and stable conditions.
- The Respondents have a greater income capacity than the Petitioners and fewer dependants. They are in a better financial position to purchase another home.
- Most importantly, the Respondents' conduct forms a vital reason why they should not be allowed to purchase the Petitioners' share.

COURT

23. I find the Respondents' evidence compelling and have been persuaded that equity should be varied. For example, it was not disputed at trial that Ms Jennifer Simmons was the one who:

(i) with her mother's permission, found, hired and paid nearly all the fees for architect, Charles Daniels) to draw up the plans which were used by the BHC to effect the 2001 renovation;

(ii) saw the process through the planning permission stages;

(iii) approached and hired the BHC to do the renovations in 2001;

(iv) wrote letters to the BHC and to government complaining about the substandard work on the part of the BHC;

(v) when the BHC breached its contract, Ms Simmons hired an attorney (through Legal Aid) and sued the BHC on her own;

(vi) through her lawsuit, Ms Simmons got the principal sum significantly reduced on the mortgage by way of settlement from $ 216,126.27 to $ 75,000;

(vii) the Petitioners have enjoyed the lion's share of the benefit of the BHC renovations since most of the work was done to the upstairs of the premises where the Petitioners live. The Petitioners agreed that the upstairs received 60% of the benefit of the renovations but denied that it was any higher although the Respondents say it was 95%;

(viii) Ms Jennifer Simmons is the party who has spent the most money on the house;

(ix) The Second Respondent, Mr Edward's renovations resulted in a new bedroom, kitchen and bathroom downstairs, where he lives as well as renovations to the one (1) bedroom downstairs unit where Ms Jennifer Simmons lives. As a result, a Certificate of Occupancy was issued for the downstairs in December of 2005 and a new assessment number was issued for the downstairs in January of 2006. This means that whichever party gets to stay in the property, they will be allowed to rent out the other half of the property and enjoy an income from the same to help pay off the outstanding mortgage; and

(x) Mr Edward's renovations resulted in the property appreciating in value by 5.7% from an estimated value of $780,000 to one of $825,000.

In Lloyds Bank Plc. V Rosset (H.L.(E.)) [1991] 1A.C. p. 107, 114 the Court said:

"*As to remedy: (a) when an equity has been raised the court looks at all the circumstances in the case to decide in what way the equity should be satisfied; (b) the court has an extremely wide discretion and formulates the remedy in terms of*

the minimum equity required to do justice to the claimant (Crabb v Arun District Council [1976] Ch. 179, 198G-199C); (c) the remedy awarded may involve the grant of a recognised proprietary interest in land, but may sometimes take the form of an occupation licence or a money remedy or a lien for expenditure (d) in general terms, the court seeks to frame the remedy in accordance with the representation or assurance on which the claimant relied, so that the outcome of the litigation is that the claimant is given no more and no less than was promised by the original representation or assurance; and (e) it is particularly appropriate for the court to satisfy the equity through an award of monetary compensation where the equity is founded on expenditure for improvements which are not substantial."

On page 115 the Court continues: "*the estoppel doctrine rests on wider equitable principles and can attach significance to a broader range of contributions inclusive of the more intangible elements of domestic commitment and endeavour."*

In Stack v Dowden supra the Court said when it comes to quantification of the beneficial interest, flexibility is essential, and a court must employ every recourse and every concept which may assist it in dealing with particular facts.

CONCLUSION

24. For any avoidance of doubt the Court has taken the evidence of Mr Richard Powell into account but has not attached much weight to it. Whatever transpired the Court is satisfied that Ms Jennifer Simmons had the health issues described at the hearing.

25. The parties have isolated the issues that the Court must consider. The Court must determine the value of each party's share in the property and which party should be allowed to buy out the interest of the other.

26. Having regard to the facts and the law, I am satisfied that in order to do equity between the parties I have concluded that the Respondents and the Petitioners are entitled

to a 65% and 35% equitable/beneficial ownership in the property respectively and that the Respondents should have the right to purchase the share belonging to the Petitioners. The parties have agreed that the property should be dealt with on the basis of Coldwell Banker, Bermuda Realty valuation of $825,000. The outstanding mortgage liability at the time of trial was $52,321.

27. The Court orders and directs that:

(1) The joint tenancy is hereby severed and the parties shall henceforth hold the property as tenants in common in the following shares: Petitioners 35%; Respondents 65%.

(2) Within 30 days of the date of this Order, the Petitioners shall convey their respective shares or interests in the Property to the Respondents as joint tenants in consideration of the sum of $ [288,750.00] less the cost of the outstanding Mortgage subsisting over the property at the date hereof ("the Purchase Price"). This sum is to be paid by the Respondents to the Petitioners on the date of such conveyance and the Respondents shall assume sole responsibility for the payments and obligations under the Mortgage of the Property from the date of the conveyance.

(3) The legal costs and disbursement of the transfer should be divided between the parties so that the Respondents pay 65% and the Petitioners 35% of the total.

(4) Within ninety (90) days from the date of this Order, the Petitioners shall deliver up vacant possession of the Property to the Respondents on or before the date set for completion of the conveyance of the Property.

28. If the parties are unable to agree Costs of these proceedings I shall hear Counsel on the issue of costs.

29. I should add that some points – raised by Ms Burgess-Howie and Ms Snelling for the parties – I have not dealt with specifically, but their relevance for the purpose of this decision has been fully considered.

30. The parties shall be at liberty to restore these proceedings for such further and other directions and orders as this Court may consider necessary in effecting the private sale of the Property and any ancillary matters related thereto.

I hereby so order.

Dated the 7th day of November 2008.

The Hon. Mrs. Norma Wade-Miller
Puisne Judge