

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2011 – 1958**

**BETWEEN**

**HILTON WHEELER**

**CLAIMANT**

**AND**

**DIANE WALTERS**

**DEFENDANT**

Before the Honourable Mr Justice Ronnie Boodoosingh

**Appearances:**

Mr Kijana Da Silva for the Claimant

Mr Yaseen Ahmed for the Defendant

**Dated: 18 September 2014**

**REASONS**

1. This claim arises from a relationship between the parties coming to an end. At issue is a house purchased in their joint names located at No. 88 Ali Drive, Pineview Gardens, Welcome Road, Cunupia and the status of it. Another issue is a Hi Lux Toyota vehicle, TCK 7010, purchased in the defendant's name but paid for up to March 2010 by the claimant and after that by the defendant. The defendant says she is a cohabitant of the claimant under the **Cohabitational Relationships Act, Chap. 45:55** and entitled to be provided for out of the assets acquired during the relationship.
  
2. The claimant says the house was purchased by him. The defendant's half share is held on trust he says. He put all the money into it. In support of this he advanced that he took a loan from his employer, the United Nations Mission in Haiti, where he has been working as a security officer since 2004. The defendant is a police officer.
  
3. The defendant says she contributed \$20,000.00 to the house which cost \$420,000.00. She said this money was obtained from a *sou sou* arrangement.
  
4. Each party gave evidence. I generally preferred the evidence of the claimant over the defendant. He was generally consistent in his evidence when cross examined. His version is more plausible regarding the events. The documentary evidence supports what he is saying especially as to his frequent money transfers from Haiti to Trinidad. This suggests that he was the one who took care of the financial affairs over the property

during the subsistence of the relationship. There was also evidence of money transfers each month from February 2009 to February 2010 by the claimant to the defendant in the sum of \$7,000.00 per month with a transfer of \$17,000.00 in March 2009.

5. I found the defendant's evidence to be implausible and unbelievable in certain key respects. The defendant said, for example, she referred to the claimant as her fiancée but she couldn't recall if he had proposed to her at certain times. She said she considered him her fiancé but could not recall if he had proposed to her. She then later said in answer to whether she considered the claimant her fiancé, that he was not her fiancé; that the relationship progressed as time elapsed. She attempted to cast the house purchase in the context of an investment together, not as a matrimonial home if marriage took place. I took this as an attempt to get away from the claimant's contention that the house was put in their joint names in contemplation of marriage. This I find in particular considering what was advanced in paragraph 6 of her Defence that there was no intention regarding the property as far as marriage was concerned.
  
6. She spoke of obtaining money from a *sou sou* which was used towards the house purchase. She produced no supporting evidence of this. She said she did not know where her hairdresser was, who was the person who held the *sou sou*. But what about the other members? She did not know of the loan amount for the house. She accepted the claimant took a loan for the house. She said in cross-examination she was not aware if the loan has been repaid. In her witness statement she mentions that money was

transferred from the claimant's employer towards the house payment. Since November 2005 she accepts she has paid no rent or mortgage from her pocket. She accepted that she had the PIN number for the claimant's bank card. She used the card to assist her to do things. The claimant said she had the bank card to do things with the house as needed.

7. She noted the claimant did not choose the Hilux but also stated that at the time it was bought she had a vehicle but the claimant did not have one. This tends to accord with the claimant's version that the Hilux was bought by him for him, but out of convenience it was put into her name.
  
8. The defendant in her witness statement detailed substantial expenditure made on improving and maintaining the house since 2010. The relationship ended in early 2010 at latest. The defendant in cross-examination accepted that the renovations done on the property after the breakdown of the relationship were done on her own accord. There was no communication between them on it. She did not try to notify him regarding the renovations to the property. Further, the defendant appears to have accelerated her work on the property just around the time and after this claim was filed on 25 May 2011. In fact, even before this, a pre-action protocol letter was sent to her dated 16 March 2011.
  
9. What follows from this is that the defendant did the renovations without the claimant's consent. They jointly owned the property. She also embarked on various improvements

to the property at a time when she knew there were imminent legal proceedings in respect of the property. In that pre-action letter the issue of a trust was specifically raised. The defendant cannot be said in that context to be unaware of what the claimant was advancing. Prudence would have dictated that she refrain from any substantial expenditure pending the determination of legal proceedings. The only reasonable conclusion to be derived from her actions at this stage must be an attempt to seek to use the fact of renovations as a means to gain leverage over a share of the property.

10. It is clear that the claimant treated the house as his own. He paid for it. He maintained it. He says he purchased it and put the defendant's name on the deed in contemplation of marriage. I accepted this evidence. It was a show of goodwill to her.

11. I also found the claimant purchased the Hilux vehicle to be his own. I do not accept this was a gift to the defendant. He continued to pay for it. It was convenient to put it in the defendant's name as he was not here in the jurisdiction. However, after April 2010 he stopped sending money for the vehicle. The defendant has had to continue to make the monthly payments.

12. Central to the defendant's case is that a cohabitational relationship existed between them.

13. There were two main periods identified. The first was from 1999 up to August 2003. At this time the defendant was married. The defendant says she was still living with her husband. She would visit the claimant at his apartment in Tunapuna which he shared with a friend. In 2003 she found out he was involved with someone else and at this point she left for the United States. Up to this point the defendant would visit the claimant at his apartment in Tunapuna when he was there. In my view this was a visiting relationship since she did not occupy the claimant's apartment on a continuous bona fide domestic basis.

14. An important issue was, what was the status of the relationship when the defendant went away in August 2003? In my view, this was a break in the relationship. Following their serious argument she said she went to "breeze off". But she did so for 6 months. She said the claimant would call her and beg her to return. The defendant says she was thinking about if to continue to be in a relationship with him in Trinidad. She said the options were to return to Trinidad to him or stay abroad. In her mind this was a continuation of the relationship. She returned in March 2004. The claimant left to work in Haiti in July 2004. She said when he left for Haiti in July she considered him her fiancé but he had not proposed to her in July 2004. She also could not recall if he had proposed to her between March 2004 and July 2004. In my view the defendant had broken off the relationship. This was clear because of her finding out about the claimant having another relationship. The fact that she was thinking about if to return to Trinidad or reside in the United States shows the end of the relationship in the context of the separation. When she decided to return to Trinidad in March 2004, the parties then got

back together. I accepted the claimant's evidence that the defendant had broken off the relationship at that time and went abroad.

15. The next period is broadly speaking from March 2004 to January 2010. However, in August 2004, the claimant took up his post in Haiti.

16. From August 2004 the claimant essentially lived in Haiti. He visited in May 2005 to purchase the property. Before the purchase of the house, the defendant would visit the claimant's apartment when he was here but she did not occupy it on a domestic basis. After this he was in Haiti and visited during vacation periods.

17. Section 3 of the **Cohabital Relationships Act, Chap. 45:55** requires that the parties live together for at least one third of the duration of the cohabitational relationship. It is for the defendant seeking to establish that such a relationship existed to prove that they did in fact live together in Trinidad and Tobago for one third of the period. The defendant has not in my view established that from an examination of the evidence. For her to establish a cohabitational relationship, the period before 2004 has to be considered and I would also have to find that they lived together at Tunapuna. I do not so find. From the evidence, the claimant visited during vacation times from 2004 to 2009. From about November 2005 when he came he would stay at the house where the defendant and her daughter had moved in. It is not clear how much time these visits

added up to, but the defendant has not established it was one-third of the time. This period did not satisfy the one-third requirement for a cohabitational relationship. For the majority of this time the claimant was in Haiti. He would return during vacation periods. Based on his vacation entitlement it cannot be that he was here for 4 months of each year.

18. They did not live together for the majority of this period. In fact they did not live together for one third of the period even though the relationship spanned a period of 5 years duration.

19. I was also referred to certain email exchanges at the time of the final break up. In one of 21 March 2010 the claimant wrote to the defendant that he had paid for the house. He further wrote and said he agreed to a 50-50 share even though he had paid for the house. This position was being adopted in March 2011. He also said she could keep the car if she continued payments for it even though he had been paying for it until then. This email was written in my view in an attempt to settle the matter between them. It cannot represent any legal entitlement accruing to the defendant because of what the claimant proposed. It also cannot bind him at this stage. The court must make a determination based on its findings on the evidence.

20. In respect of the Hilux vehicle it remains in the name of the defendant. She has had to continue to pay for it and maintain it since the claimant stopped sending money for it.



She has also had use of it from the inception. I would accordingly make no order in respect of the vehicle. The defendant is the registered owner and is in possession of it. She would also have acquired an equitable interest in it given the fact that she has had to maintain it and pay for it since 2010.

21. In respect of the house I find that the house was purchased by the claimant out of the proceeds of his income and loan payments. I find that he sent money regularly to the defendant for improvements and upkeep of the house. The defendant lived there rent free. She may have contributed at times to expenses, but she also lived there. I also find that her name was placed on the memorandum of transfer for the reasons set out by the claimant. These related to trying to show the sincerity of his intentions to her, in the context of what had happened before, of his desire to marry her. The house, therefore, was purchased in contemplation of marriage. This is consistent with the fact that the parties had posted marriage bands on more than one occasion. It was his house purchased with his money. He subsequently found someone else and has since married that person.

22. Given that no right as a cohabitant arises, any question as to title or possession of property jointly acquired for the parties' benefit during the relationship is left to be determined under the principles of constructive or resulting trusts.

23. In Halsbury's Vol 72 (2009) 5<sup>th</sup> ed. at para 279 and the relevant footnote it is stated:

"279. Property purchased in joint names. Where a domestic property is conveyed into the joint names of cohabitants **without any declaration of trust** there is a prime facie case that both the legal and beneficial interests in the property are joint and equal. If the purchase money was provided out of jointly pooled resources, an equitable joint tenancy exists; **but, if the purchase money was provided in unequal shares, each party has an equitable tenancy in common under a resulting trust with shares proportionate to his or her respective contributions to the purchase price**<sup>3</sup>. Provision of the purchase price may arise from payment of mortgage instalments or of the deposit or of legal fees. It may arise indirectly, as where one party's salary is used for household expenses and holidays so that the other party's salary which would otherwise have to bear such expenses may be used to pay the mortgage instalments. Where property is bought with the aid of a mortgage, the court has to assess each of the parties' respective contributions in a broad sense; but the court is entitled to look only at the financial contributions, or their real or substantial equivalent, to the acquisition of the property. Prima facie, if the purchase is financed in whole or in part on mortgage, the person who assumed liability for the mortgage payments, as between the joint owners, is to be treated as having contributed the mortgage money."

*FOOTNOTE 3. Bernard v Josephs* [1982] Ch 391, [1982] 3 All ER 162, CA (where the principles applicable to spouses were applied to an unmarried couple); *Oxley v Hiscock* [2004] EWCA Civ 546, [2005] Fam 211, [2004] 3 All ER 703, [2004] 2 FCR 295 (same); see also *Brassford v Patel* [2007] BPIR 1049, [2007] All ER (D) 256 (Feb) (the fact that the property was held in joint names could be treated as evidence that it was to be held in equal shares notwithstanding unequal contributions, but each case depends upon its own facts). ***Young v Young* [1984] FLR 375, [1984] Fam Law 271, CA is an unusual case where the house was in joint names but the man had made no contribution and was held to have no beneficial interest.**

24. Further in **Burgess v Rawnsley** [1975] Ch 429 at 437 Lord Denning stated:

“...if both parties had contemplated marriage and the house was taken in joint names with that object – then when that object failed, there would be a resulting trust for them according to their respective contributions to the purchase price.”

In that case it was half and half.

25. I find that the defendant did not contribute to the purchase price. Notwithstanding that the defendant went ahead and made improvements to the house after the end of the relationship this does not change the basis on which the house was purchased. The defendant’s role was that she coordinated the maintenance of the property. She would oversee the cutting of the lawn; any plumbing works to be done; the physical payment of all the bills from funds generally provided by the claimant; the fixing and maintenance of facilities such as the gates. She also cooked and carried out domestic responsibilities when the claimant visited.

26. The court must look at financial contributions or their real and substantial equivalent.

Some substantial value must at the end of the day be ascribed to these various acts of contribution detailed in the defendant’s witness statement, which has been accepted by the claimant except that he disputes that the defendant paid out of her pocket for them. The house was purchased for \$420,000.00 in 2005. We do not have an up to date valuation. In any event given the works the defendant undertook it would be difficult to

separate those from how the property stood before. There is, however, an agreed value of the property.

27. Given all of the circumstances the defendant is entitled to be paid something assessed on a broad basis for the role she played in the property up to the end of the relationship but generally excluding any works undertaken after the pre-action protocol letter. The defendant's apparent hurried activity in respect of the property when litigation was imminent cannot be used to drive the court to make an award on the basis of sympathy. Taking account of the evidence led and particularly her role in the upkeep and maintenance of the property over a 5 year period, a fair contribution is the sum of \$100,000.00. The basis of this is an agreed value of \$750,000.00. I should add that no report was put in by the defendant of a valuation or quantity surveyor to value any work which may have been done.

28. Applying **Burgess v Rawnsley** and the other authorities referred to therefore the order is as follows:

- a. A declaration that the defendant's half share in the house at 88 Ali Drive, Pineview Gardens, Welcome Road, Cunupia described in Memorandum of Transfer No. 6 dated 23 January 2007 and registered on 25 October 2007 in Volume 4953 Folio 21 described at paragraph 1 of the claim form is held on trust for the claimant.

- b. The defendant is to execute a memorandum of transfer of this property to the claimant within 60 days. The claimant's attorney is to prepare the draft for execution.
- c. In default of the defendant's execution, the Registrar of the Supreme Court is empowered to execute the memorandum of transfer.
- d. The defendant is to vacate the property on or before 30 September 2014 and in the interim is not to commit any waste or damage to the property.
- e. The claimant is to pay the defendant the sum of \$100,000.00 representing the court's finding of the defendant's equity in the property.

29. For the reasons set out above I will not disturb the position with regard to the Toyota Hilux van, TCK 7010. The defendant will therefore remain as registered owner and in possession of it.

30. Each party is to bear his/her own costs.

Ronnie Boodoosingh

Judge