

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2021/CLE/gen/00423

BETWEEN

MARVA MCPHEE ROLLE

Plaintiff

AND

LEO VALENTINO ROLLE

Defendant

Before Hon. Chief Justice Ian R. Winder

Appearances: Caleb Alexander Dorsett for the Plaintiff

Cheryl Bazard for the Defendant

5 April 2022

JUDGMENT

WINDER, J

The plaintiff (Marva) claims against the defendant (Leo) the right to remain in occupation of the home situated at 242 Elizabeth Estates Subdivision where she had resided with her husband Lyndon Rolle (Lyndon).

Background

1. Marva and Lyndon were married on 23 June 2007. Following the marriage Marva moved into #242 Elizabeth Estates (the Property) with her husband, Lyndon. The property was owned and occupied by Lyndon prior to the marriage. Lyndon is Leo's father.

2. On 5 October 2007, three months after the marriage, Lyndon and Marva secured a loan to renovate the Property, from RBC FINCO bank (the Bank). The renovations included constructing an efficiency apartment unit onto the home. The mortgage process did not involve the transfer of any legal title to Marva. The efficiency was rented by Lyndon.

3. Marva and Lyndon remained in the home until Lyndon's death on 21 January 2021, leaving Marva as the sole occupant of the main portion of the house. The marriage produced no children.

4. Lyndon was buried on 6 February 2021. Shortly after the burial, Marva says that she learnt that Leo was the owner of the Property.

5. Marva commenced this action against Leo with respect to her occupation of the Property. Marva's Statement of Claim is settled in the following terms:
 1. That the Plaintiff is the widow of the late Lyndon Leo Rolle who passed away on 21st January, 2021 at the Princess Margaret Hospital, Nassau Bahamas.
 2. That the Plaintiff and Lyndon Leo Rolle (deceased), were joined in holy matrimony on 23rd June, 2007 by Pastor Ranford Andrew Patterson a marriage officer for the Bahamas.
 3. That Lyndon Rolle became the fee simple owner, of a parcel of lot namely #242 Elizabeth Estates, which he jointly owned with his mother Veramae Rolle; who predeceased him some twenty years ago;

4. That after the marriage ceremony, the parties resided at #242 Elizabeth Estates, which became the matrimonial home for the past thirteenth (sic) (13) years;
5. That the Plaintiff and Lyndon Leo Rolle resided in the matrimonial home as husband and wife up to the time of Lyndon Rolle (sic) death on 21st January, 2021;
6. That upon moving into the home in 2007, the Plaintiff and Lyndon Leo Rolle (deceased) took out a mortgage at the Finance Corporation of the Bahamas (Finco) to remodel the home at #242 Elizabeth Estates. A one room efficiency was also erected in order to assist with the payments of the loan they had entered into.
7. That the loan began on 10-05-2007 and was supposed to mature on 6th June, 2029.
8. The Plaintiff assisted the deceased Lyndon Leo Rolle with \$500.00 cash towards the mortgage loan for the past (12) years, every month except in 2020. The loan payment were around \$1,300.00 per month.
9. That the Respondent is the son of the late Lyndon Leo Rolle by another woman.
10. That on 6th February, 2021, the Plaintiff and the Respondent with the aid of an insurance policy buried Lyndon Leo Rolle.
11. The Respondent approached the Plaintiff a few days after the burial and said that his father had signed the house over to him and that she would have to pay \$600.00 per month for rent. Further that the Respondent was cutting her master bedroom in half to make another efficiency to rent.
12. On the 18th March, 2021 the Plaintiff went to Finco Bank to find out how she was to pay her mortgage, but was given a printout and advised to go to Inland Revenue.
13. The Plaintiff went to Inland Revenue and was advised to go and see a lawyer who advised her that her mortgage was paid off on 30th January, 2019.
14. That on 26th February, 2021, the Plaintiff's lawyer, wrote to the Respondent Mr. Valentino Rolle, who had given the Plaintiff a Whatsapp copy of the conveyance from Lyndon Leo Rolle, his father, to him.
15. The Plaintiff was not made aware that her husband had conveyed the matrimonial home to the Respondent, his son;
16. On 16th April, 2021, the Plaintiff was served with a summons from the Magistrate Court, from the Respondent for eviction from the matrimonial home.
17. The Plaintiff was not told or advised by her husband, the Respondent or the bank that their mortgage was delinquent in 2017.
18. The Plaintiff was not told or advised by her husband or the Respondent that rent was being paid since 2019;

19. Finco bank did not advise the Plaintiff that they were entering into a contract for the sale of the matrimonial home.
20. The Plaintiff was not told by Lyndon Rolle (deceased) that he was transferring the home to his son the Respondent for consideration.
21. Finco bank, Lyndon Leo Rolle nor the Respondent got the Plaintiff's consent to transfer her right of occupation to the marital home.
22. The Plaintiff never, consented or agreed to give up her right of occupation to the matrimonial home at #242 Elizabeth Estates.

...

AND THE PLAINTIFF CLAIM is for:-

1. A Declaration that the right of occupation creates a charge on matrimonial property;
2. A Declaration that unless the charge is discharged to the satisfaction of the court, it creates an equitable interest upon the land;
3. A Declaration that the charge continues to run with the land unless lawfully discharged;
4. A Declaration that the Plaintiff have a statutory right to occupy the matrimonial home and not to be evicted or excluded;

...

6. Leo's Defence and Counterclaim is settled in the following terms:

1. The Defendant is the owner of Lot Number 242 situate in the Elizabeth Estates Subdivision of the Eastern District of the Island of New Providence one of the Islands of the Commonwealth of The Bahamas pursuant to an Indenture of Conveyance dated the 20th day of December, A.D., 2018 and made between Lyndon Leo Rolle also known as Leo Lyndon Rolle and the Defendant and recorded in the Registry of Records in the City of Nassau in Volume 13193 at pages 575 to 583 for a consideration of \$153,375.00.
2. The Defendant neither admits nor denies paragraphs 1 and 2 of the Statement of Claim.
3. That the Defendant admits that the deceased Lyndon Leo Rolle was the sole fee simple owner of the said Lot Number 242.
4. The Defendant denies paragraph 4 of the Statement of Claim and puts the Plaintiff to strict proof thereof.
5. That the Deceased Lyndon Leo Rolle entered into a month-to month lease agreement with the Defendant dated the 30th day of January, 2019, which said Lease continued to the date of his death. That the lease payments were \$500.00 per month. The Defendant will rely on the terms and conditions of the

said Lease Agreement as well as receipts of payment of the lease by the deceased Lyndon Leo Rolle.

6. The Defendant neither admits nor denies paragraphs 5,6,7 and 8 of the Statement of Claim and puts the Plaintiff to strict proof thereof.
7. The Defendant admits that he is the son of the late Lyndon Leo Rolle.
8. The Defendant denies paragraph 10 of the said Statement of Claim and states that he alone bore the costs associated with the funeral expenses of the late Lyndon Leo Rolle from personal funds and the proceeds of an insurance policy for which he paid the premiums. The Defendant put the plaintiff to strict proof to her claim in paragraph 10 of the Statement of Claim.
9. The Defendant neither admits nor denies paragraphs 11 and 12 of the Statement of Claim and puts the Plaintiff to strict proof thereof.
10. The Defendant admits that the only outstanding loan/mortgage on the said Lot 242 is that which was secured by the property between an Indenture of Mortgage between himself and RBC Finco as was advised to the Plaintiff through her Counsel by letter dated 8th March, 2021. The Defendant further states that the Plaintiff was put in receipt of a demand letter from Higgs & Johnson on behalf of Finance Corporation of the Bahamas Limited and will rely on the full contents and import of the said letter.
11. The Defendant admits that the firm of Prestige Legal Services wrote him a letter dated 26th February, 2021.
12. The Defendant neither admits nor denies paragraph (sic) 15, 17, 18, 19,20,21, 22, 23 and 24 of the Statement of Claim and puts the Plaintiff to strict proof thereof.
13. The Defendant denies paragraph 24 of the Statement of Claim and puts the Plaintiff to strict proof thereof.
14. The Defendant resists the prayers made in paragraphs 25, 26 and 27 of the Statement of Claim.
15. In the circumstances it is denied that the Plaintiff is entitled to the relief claimed or any relief at all.
16. Save as hereinbefore expressly admitted the Defendant denies each and every allegation of fact contained in paragraphs 1 to 27 of the Statement of Claim as if the same were set forth herein and specifically traversed.

COUNTERCLAIM

17. Further, the Defendant has suffered loss and/or damage as well as the use and enjoyment of the said premises owing to the failure of the Plaintiff to remove herself from the premises and/or failing to honour the lease agreement entered into by the late Lyndon Rolle in the sum of \$500.00 per month.

18. The Defendant has also suffered loss and/or damage owing to the refusal of the Plaintiff to repay the sums collected as rent from the efficiency located on the said premises.

Particulars of loss and/or damage

Loss of rental pursuant to the Lease Agreement

For a period of 6 months and continuing \$3,000.00 and continuing

Loss of Rental from the Efficiency

For the period of 6 months and continuing \$1,980.00 and continuing

TOTAL \$4,980.00 and continuing

AND the Defendants (sic) claims:

1. A Declaration that the Defendant is entitled to sole possession, use and right of occupation of the said premises;
2. An Order that the Plaintiff be evicted from the said premises immediately;
3. Damages in the amount of \$4,980.00 and continuing;
4. Interest;
5. Costs;
6. Such further or other relief as the Court deems just.

7. At the trial Marva and Leo each gave evidence in their respective cases. The witnesses were subject to cross examination on their filed affidavit evidence which stood as their evidence in chief.

8. In her evidence, Marva avers that at the time of Lyndon's death they both resided in the matrimonial home. She met Lyndon in the home that he owned with his mother before she passed away some 20 years prior. They took out a loan with the Bank to remodel the house at #242 Elizabeth Estates which included the construction of a one bedroom efficiency onto the house. The loan commenced on 5 October 2007 and was to mature on 6 June 2029. The loan payments were approximately \$1,300 per month. She contributed by giving Lyndon \$500 payments toward the loan payment until about March 2020.

9. Marva says that ten (10) days after Lyndon's burial on 6 February 2021, Leo advised her that he was the owner of the Property and she was to pay \$600 per month to him for rent. She went into the bank in March 2021 and was given a print out which reflected that the loan had been paid off since January 2019.

10. On 16 April 2021 she was served with a Magistrates Court summons in which Leo sought to have her evicted from the Property.

11. In his evidence, Leo avers that Marva was fully aware that the loan taken out by her and Lyndon was not being serviced in a timely matter. He relies on a demand letter from Higgs & Johnson dated 18 October 2017 written to both she and Lyndon, separately and in the same terms, which says the mortgage on 242 Elizabeth Estates was in arrears. He alleges that Marva was in receipt of the letter which was settled as below:

Dear Ms. Rolle

Re: Mortgage Loan No. 2003864 with Finance Corporation of Bahamas Limited Over Lot 242 Elizabeth Estates Subdivision, New Providence, Bahamas ("The Property")

We have been instructed by Finance Corporation of Bahamas Limited ("FINCo") and act for them herein.

We are advised by the RBC Bahamas Collection Centre that you are indebted to FINCo and that you breached the terms of your loan agreement by failing to honour your repayment obligation as scheduled in your loan agreement in relation thereto.

Your indebtedness arises by virtue of mortgage loan, account number 2003864, in the name Lyndon Rolle granted by FINCo to yourself on the 5th October, 2007. As at the 26th June, 2017 the said Loan was outstanding for the principal amount of \$134,791.25, accrued interest in the amount of \$2,487.75 and administrative costs of \$637.50 paid by FINCo to date in relation to the Property. The current arrears is \$6,430.65 or 108 days in arrears. Please note that interest continues to accrue on the said loan at the rate 9.25 per centum per annum, or \$31.39 per diem.

Our client has instructed us to demand on the loan accordingly. We do hereby demand your immediate payment of the sum \$7,068.15 (arrears amount plus administrative charges mentioned above) together with interest and late charges outstanding to the date of payment in order to cure the loan and avoid legal proceedings. Should you wish to avoid the commencement of legal proceedings,

you must, within Thirty (30) days of the date of service of this notice upon you, pay the said sum set out above or contact our client so as to make suitable payment arrangements. Should you fail to remedy the breach in the manner aforesaid, legal proceedings may be commenced against you for possession and sale of the property along with the full recovery of the debt together with legal costs, and without any further notice to you.

You or a member of your immediate family who has been contributing to the payment of the mortgage may apply to the Supreme Court for relief within Twenty-Eight (28) days of receipt of this letter in accordance with the Homeowners Protection Act, 2017. ...

12. Leo says that he purchased the Property from Lyndon on 20 December 2018. He took out a mortgage with RBC FINCO to facilitate the purchase. He has been paying the mortgage, legal fees, loans and insurance for the property since his acquisition. Leo also says that on 30 January 2019 he entered into a month-to-month lease agreement with Lyndon as a tenant of the Property. Lyndon has paid rent to him since 2 February 2019 through 7 December 2020. Also, Lyndon acted as his agent by collecting the rent from the efficiency on the Property on his behalf and turning the rent monies over to him. Leo asserts that when Lyndon died he was merely a tenant of the Property. The property was not matrimonial property at the time of Lyndon's death.

13. On 8 March 2021 Leo's attorneys, Gibson & Associates, sent a letter to Marva demanding that she vacate the Property within 30 days. Marva refused to leave the property. Leo's evidence was that as a result of the failure to obtain any income from the Property to fund the mortgage, as well as Marva's refusal to move, the Bank was taking steps to exercise its power of sale over the property. On 17 August 2021 the Bank wrote to Marva demanding that she vacate the property, that letter was settled in the following terms:

Dear Sir/Madam
Re: Unauthorized Access at:
Lot 242 Elizabeth Estates, Nassau, Bahamas

Dear Madam,

The above-mentioned property is mortgaged with RBC Royal Bank.

We request that you vacate the premises by September 2, 2021.

We empathize with you during this Pandemic, and trust that (sic) are now in position to vacate the premises, to unforeseen liabilities.

This letter is to formally advise you that the above property is being sold under RBC Royal Bank's Power of Sale and consequently you are requested to remove your belongings from the premises by 2nd September, 2021 as you are TRESPASSING and have entered the premises without permission. Should you leave your personal belongings in the house, we will not be responsible for the same.

Once you have vacated the premises, kindly confirm by calling...to advise us of same.

Your full co-operation is required.

Yours truly,
Department Manager
Recoveries & Specialized Services, Credit Management Recoveries
RBC Caribbean Banking

Issues

14. The issues in this matter can be distilled as such:
 - i. Whether in all the circumstances, Marva has an equitable/proprietary interest and/or entitlement at common law and/or statute to continue to reside rent free in 242 Elizabeth Estates.
 - ii. Whether Leo is the fee simple owner and entitled to receive rent from Marva or alternatively evict her from the property.

Submissions

15. Counsel for Marva reiterates Marva's claim that she joined with Lyndon to obtain a mortgage and made a Five hundred dollar (\$500) contribution per month since inception, to the repayment of the Thirteen hundred dollars (\$1300) monthly loan payment. It is submitted that she contributed equally to the upkeep and maintenance of the property. Based on her contributions it is submitted that she has a proprietary interest in the property.

16. The case of *Dillwyn v Llewelyn [1861-73] All ER Rep 384* is relied on by Marva to reinforce the claim in equity over the property. In the case of Dillwyn, a father gifted land to his son without a conveyance. The son built on the land. The father never altered his will and when he died the question as to the son's right to the land upon which he had built arose. It was held by the court that the son was indeed entitled to the land upon which he had built.

17. The learned authors of *Modern Equity by Hanbury and Martin 14th edition* are relied on to indicate that Marva acted to her detriment by investing in and up-keeping the property. This position was further supported by reliance on the case of *Taylor Fashions Ltd v Liverpool Victoria Trustees Co. Ltd. (1981) 2 WLR 576* whereby Counsel submits there is estoppel by acquiescence in this matter.

18. In opposition to the submissions on behalf of Marva, Counsel for Leo highlights the fact that Lyndon never conveyed any interest in the Property to Marva, 'nor did he evince an intention so to do.' The Property was sold to Leo with Marva indicating in her evidence that she did not find out until sometime in 2021 that the loan had been repaid since early 2019.

19. Leo relies on section 51 of the Conveyancing and Law of Property Act (CLA) in his submission that the conveyance between Lyndon and Leo is effective:

51. (1) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have, in, to or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to or on the same.

(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3) This section applies only to conveyances made after the commencement of this Act.

20. Leo contends that when Lyndon died any rights and title that he had over the Property had already been extinguished and there was no inheritance left for Marva as a result. In any event Section 24(8)(c) of the Inheritance Act does not support Marva's position of a charge of the property in the circumstances, which states:

(8) Save as otherwise provided in the foregoing subsection after the coming into operation of this section, no act by, or transaction of, the spouse or a holder of a right of occupation shall have the effect of prejudicing the charge arising from the right of occupation under subsection (6) unless upon a like application to the court under subsection (3) by an interested party it is shown to the satisfaction of the court that —

(a) the holder was a party to such act or transaction;

(b) the holder had prior to or contemporaneously with such act or transaction executed a document expressing consent to the act or transaction;

(c) the act or transaction had been bona fide entered into by the spouse or the holder prior to the charge for full and valuable consideration and the proceeds of the act or transaction were applied to the benefit of the matrimonial home or the members of the family living therein.

21. The case of *Dillwyn* does not assist Marva submits Counsel for Leo. There is neither a resulting or constructive trust here as there was never a common intention by Lyndon for Marva to acquire beneficial interest in the Property. It was clear when Lyndon sold the property to Leo to pay off the loan that there was no common intention to share beneficial interest in the property (*Sweeting v Finlayson [2010] 3 BHS J. No. 36* and *Jones (Appellant) v Kernott (Respondent) [2011] UKSC 53*).

Law, Analysis & Conclusion

22. This is a most unfortunate case, considering the nature of the property dispute and the circumstances surrounding it. Regrettably, in light of the law and the evidence, it is my considered opinion that Marva is not entitled to an interest in or a right to remain in the property.

23. Having considered the pleadings and evidence of the parties, I was unable to find on balance that there was a common intention before the death of Lyndon for Marva to share in the beneficial interest of the Property. The claims of Marva lay solely in equity having been married to Lyndon and contributed to mortgage payments and the general maintenance and upkeep of the home.

24. The property at the center of this action was admittedly not acquired by Marva and Lyndon jointly and was never conveyed to the couple jointly. The Property is therefore classified under the law as a pre-marital asset, having been inherited by Lyndon from his mother prior to the marriage to Marva. There is no evidence of any representation made to Marva for her to enter into the mortgage or to encourage her to sign on to the loan to secure an interest in the Property. There was no transfer of any interest to Marva at the time she joined in the loan to upgrade the Property.

25. Whilst Marva was a party to an earlier mortgage over the Property, she was not named in the conveyance to the Property. She was responsible for the payments of the loan but this did not represent ownership of the Property. Rights of dower having been extinguished, the state of the law is such that if a home is not jointly owned, the title owner is generally free to do what he wishes with his property without the permission or consent of his spouse.

26. Latent equities, if it arises, can never take priority over a mortgage of an estate. Priority is precluded by estoppel (*Abbey National Building Society v Cann [1991] 1 AC 56*). In the circumstances, Marva's equitable claim, if proven, could not be given priority over the debt owed to the bank if possession was sought by the bank. The evidence was that the mortgage was in arrears, notification of such having been sent to both her and Lyndon since 2018.

27. Counsel for Marva submits that she has a trust/charge over the property due to her equitable interest. In the case of *Lloyd's Bank plc v Rosset et al [1991] 1 AC 107*, the marriage had broken down and the husband who purchased and renovated the

property left the home. Thereafter, the property became distressed for non-payment of the loan used to purchase it. The wife resisted the bank's attempts at possession of the property, claiming that she had a beneficial interest in it, which she contended created a charge in her favour over the property. In *Lloyd's Bank plc v Rosset*, the court decided that there was a critical distinction to be drawn when deciding whether any beneficial interest accrued to a party on the property:

"The first consideration is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially."

28. The second limb of the test only comes into play if the intention test is found in the affirmative. The party who asserts and has demonstrated that there was intention to beneficially own the property must show that she acted to her 'detriment or significantly altered her position in reliance on the agreement' for the establishment of a constructive trust or to found a claim for proprietary estoppel. The House of Lords rejected the claim of the wife that a constructive trust existed which shattered the assertion that she had an overriding interest in the property that acted as a charge on her husband's legal title.

29. Further, the House of Lords decision in *Stack v Dowden [2007] 2 AC 432*, confirmed the position that the doctrine of constructive trusts does not negate the need to ascertain the intentions of the parties with respect to the beneficial ownership of property. There is no room for the abandonment of intention for what the court considers fair. To put it plainly, the court cannot take on the role of Parliament and in so doing vary the property rights of property owners to achieve a perceived fair outcome in proceedings.

30. In the present case, this was a property whose payments were in arrears. While the situation is unfortunate there was no evidence that during Lyndon's lifetime he and Marva ever came to a consensus of sharing of beneficial ownership of the Property. The conduct of the parties from the evidence does not speak to this common intention. The

fact is Lyndon inherited the house from his mother. He put it in jeopardy when he and Marva did not or were unable to meet their loan obligations to the Bank. By all appearances Lyndon sold the property to Leo willingly. There has been no evidence that he was coerced or unduly influenced in any way to do so. Lyndon's motivation, it seems, was to simply prevent the bank gaining possession of the home, previously owned by his mother.

31. The oral evidence of Marva did not possess the necessary weight to persuade me that she acquired a beneficial interest in the property. While I did accept her evidence that she was blind-sided by the revelation of Leo that Lyndon had sold the property to him, I did not accept her oral evidence that neither the signature on the conveyance or the rental agreement in evidence was Lyndon's. In any event, these facts were not pleaded. I also did not accept her evidence that she was unaware that the loan payments were behind at any time where neither she nor Lyndon were gainfully employed.

32. While she averred that she paid a portion of the loan payment until the Covid-19 pandemic prevented her from working for some months beginning in March 2020, she lacked knowledge about the status of the loan. I accept the evidence that she was sent a demand letter on behalf of the Bank for payment. She did not appear to take any meaningful role in ensuring or even checking to see what the state of the loan was after this point. She admittedly only checked on the status of the loan after Lyndon died.

33. While it is a fact that Leo had notice (or ought to have had notice) of Marva's occupation he had no reason to believe that his father, who had inherited the property from his own mother, did not have the right to pass title to him. Also, Leo ought to have inquired as to Marva's awareness of the transaction, I am not satisfied that he was aware of her lack of knowledge. The title to the Property has legally always been in the Bank, subject to the mortgage.

34. Whilst the mortgagor changed from Lyndon and Marva to Leo, the legal title and interest of the Bank never changed. In these circumstances therefore, I find that section 24 of the Inheritance Act, which affords a right of occupation to a surviving spouse, would

not be applicable as mortgagees are expressly excluded. As it stands, Lyndon is the current mortgagor of the property, responsible for loan payments and any other legal obligations such as insurance and real property taxes that go with his position as mortgagor.

35. In the circumstances, Marva's claim for declaratory relief is refused. In relation to the Leo's application for declaratory relief, I order that Marva does not have a right of occupation in the property in the face of the outstanding mortgage to the Bank and Lyndon's inter vivos transfer for valuable consideration to Leo. Marva shall have 120 days to vacate the property.

36. In the circumstances I make no order for costs.

Dated this 12th day of September A.D., 2022

A handwritten signature in black ink, appearing to read 'I. R. Winder', written in a cursive style.

Ian R. Winder
Chief Justice