

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL CLAIMANT NO.: 36 OF 1996

BETWEEN:

JUNE CORNWALL

Claimant

vs

SIMON CROOKE

Defendant

Appearances:

Mr. Victor Cuffy for the Claimant

Mr. Joseph Delves for the Defendant

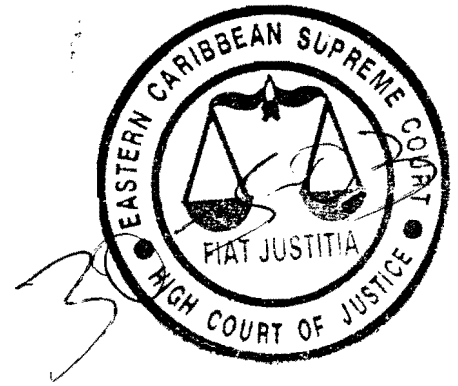
2002, March 13

2002, March 18

2003, May 30

JUDGMENT

- [1] **BRUCE-LYLE, J** -- When this matter came up for trial, it was agreed by both Counsel for the Claimant and the defendant on a point raised by Counsel for the Defendant, that the only issue for the Court to determine was whether the Claimant was entitled to a half-share in the house in issue, on a plot of land, and not as the writ stated to include a half-share in the land.
- [2] Learned Counsel for the Claimant, Mr. Victor Cuffy, also applied to the Court to amend his statement of claim to delete any reference to the Claimant assisting in acquiring the house in issue. He further stated that their only issue for the Court to determine was whether the Claimant's contribution to the development of the house entitled her to a half-share in the house.
- [3] The issues having been narrowed down, the trial commenced.



FACTS OF THE CASE

- [4] It is not in dispute that the Claimant June Cornwall was in a common-law relationship with the defendant Simon Crooke. They had lived together for seven years. This union produced four children. At the time of the trial the children were aged 15 years, 12 years, 11 years and 8 years respectively. The Claimant has another child aged 19 years old, born before herself and the defendant started their relationship and began living together in December 1986. This child 19 years old, also lived with the parties.
- [5] At issue in this Case is a house situated at Rockies in Kingstown St. Vincent where the parties resided with the five children during the union. The Claimant maintained that even though the house was purchased together with the land it is situated on by Simon Crooke, the house was later transformed. She stated that the transformation of the house started in 1989, and on completion now comprised of an upstairs portion and a downstairs portion, and that she contributed substantially to the transformation.
- [6] The downstairs portion comprised of two bedrooms which were rented, whilst the upstairs portion comprised of two bedrooms which were not completed as yet, but she still occupied the upstairs part of the house.

EVIDENCE

- [7] The main contention of the Claimant June Cornwall, was that she borrowed a sum of \$3,000 from the National Commercial Bank (NCB) which she gave to Simon Crooke to purchase things for the construction of the house. She described the items purchased as sand, stones, building blocks, and one window, rabacca stuff (construction sand). She also contended that she assisted in the making of

building blocks, carried sand and stone to the construction site, and also helped in mixing cement and cooked for the workmen sometimes.

[8] June Cornwall further contended that she paid back the bank the sum of \$35.04 per week until the loan of \$3,000 was liquidated, and that those payments came from her earnings as a worker at the Corea's Department Store, and that no-one assisted her in paying off the loan.

[9] In 1993 the Union between June Cornwall and Simon Croke fell on the rocky road. Simon Croke moved out of the house, never to return. June remained in the house until trial. June stated also that the downstairs of the house was rented in 1996 with Simon being responsible for the rental.

[10] June, as a consequence is claiming a half-share in the house, for the money and work she put in the house, and also for her children to have somewhere to live. She firmly stated that she wanted somewhere for them to live until the last child had attained the age of majority in St. Vincent, which is 18 years. She denied ever receiving anything from the rents collected for the rental of the downstairs portion of the building.

[11] The Claimant under cross-examination admitted that the downstairs portion was completed by the defendant after he had left the house and the union in 1993. She conceded that she was not questioning the rent from downstairs. Her main area of concentration was the upstairs where she had been living all the time. She described the upstairs portion as being in an unfinished state.

[12] Despite her insistence that she gave the defendant Simon \$3,000 to help purchase materials for the construction of the house, she could not provide to the Court any proof by way of documents, such as receipts, of that fact. Neither could she remember when she gave Simon the money. She identified a loan agreement with the National Commercial Bank pertaining to the \$3,000, shown to her by Counsel

for Simon Crooke dated 14th February 1989. That is when, she told the Court, that she had given Simon the money (\$3,000). She also identified receipts for the downstairs dated 9th May 1995, 19th May 1995, but stated that they were not connected to the \$3,000 she had given to the defendant Simon.

[13] She also claimed that after Simon had left her for another woman in 1993, she still gave him some more money sometime in 1995 to help with the completion of the downstairs and that she did that to help him out even though their relationship had floundered on the rocks. She also categorically denied that the loan she secured from National Commercial Bank for the sum of \$3,000 was used by her to defray costs for a fridge and a sewing machine from various appliance stores. She then stated the current value of the house in issue at about \$110,000.

[14] June Cornwall also told the Court that she knew that Simon Crooke had borrowed various sums of money from the National Commercial Bank and the Government Employees' Credit Union to purchase the house, but was not sure if those various sums borrowed were also used in the repairs to the house. She then proceeded to explain to the Court how her then eight year old son Albert and herself assisted the defendant Simon on his days off from work as a policeman, to "mix concrete and run blocks." She stated that she assisted in this construction even while she was pregnant.

[15] The sole witness for the Claimant's case was one Sylvina Douglas. She presented herself as a neighbour to June Cornwall and knew her very well. She stated she knew that June and Simon used to live together and had children from that union. She stated that they started living in a board house, which was subsequently transformed into a concrete house with both June and Simon working together on the house. She also said that she used to assist them in the construction. She said June helped by carrying sand from the road to the construction site, and also helped Simon's relatives from the Leeward area mix mortar together with her son.

She described June as always present at the construction site as work was in progress.

[16] Under cross-examination this witness stated that the house in issue was bought from her sister Celena Williams and her husband, but she did not know the details of the purchase transaction. She maintained though that she assisted in the construction which was done by Simon's relatives from Leeward, with June and her son assisting by passing water to Simon as he built.

[17] The Defendant's case was simple. He categorically denied ever receiving any contribution of \$3,000 from the Claimant June towards the construction of the house even though he admitted to her helping out occasionally with carrying sand and cooking for the workmen. He told the Court that he was the sole financier of the purchase of the house and the repairs to the house. This he did he said by borrowing various sums of money from the National Commercial Bank and the Government Employees' Credit Union. These sums were as follows:-

- (1) \$17,000 from the National Commercial Bank as per Agreement 725/88 which he paid off by monthly instalments and one lump sum payment of \$8,000 to clear the mortgage when he resigned from the Police Force. From this \$17,000 he paid part of the purchase price for the house which was sold at \$12,000. He categorically denied that June ever assisted him in paying off this loan.
- (2) Loans taken from the Government Employees Credit Union over periods of time which were co-signed by his very close friend Steve Robinson.
- (3) Monies expended by his current girlfriend to assist in completing the downstairs portion of the house, by way of building materials. This he said was done in 1995. He categorically denied that June Cornwall ever gave him some monies in 1995 to assist in the completion of the

downstairs. He said this could not have happened as they were not communicating at the time; and neither did June assist in anyway with the construction of the downstairs.

- [18] Simon Croke admitted that when he left the Union in 1993, the upstairs part of the house was not completed, but insisted that June Cornwall did not give him any part of the \$3,000 she borrowed from the National Commercial Bank, but used it to pay off for a fridge she took from Geddes Grant and a sewing machine from Singer on hire purchase. He insisted that since June Cornwall was bringing in \$88 per week from her job at Coreas, she had no money to sink or plough into the repairs to the house, and stated that he would have spent about \$80,000 in all to do the repairs to the house including the downstairs.
- [19] Evidence was led by June Cornwall pertaining to her trip to the USA leaving her children in the house and the Defendant's subsequent cutting off of utilities to the said house which necessitated her children to move from the house to live with her sister, and explanations to this situation by Simon Croke. I find this bit of evidence to be totally irrelevant to the main issue in this case. I will therefore hold them to be of no moment in this case.
- [20] Under cross-examination Simon Croke basically denied any right of June Cornwall to an half share claim on the house because of what he had stated in his evidence-in-chief. He admitted that he lived with June for a period of five years, during which she helped in the home with the four children of the union, and that she contributed to the upkeep of the home until he left in 1993. After that time, there was no communication with June except for when she needed something for the children and knew where to find him.
- [21] Simon Croke then interestingly stated to the Court that he had no problems if June remained in the house with the children, including her fifteen year old daughter, but then he could not give an estimate to the value of the house, as he

had never had it valued nor had he been in it for some time. He described himself as a businessman mainly in the transportation business.

ISSUES:

[22] Clearly the issues to be determined by this Court are:

- (a) whether the Claimant made any contributions to the transformation of the house;
- (b) the extent of that contribution, if any
- (c) has the Claimant established that she has a beneficial interest in the house by showing that the defendant holds the legal estate on trust to give to that interest.

THE LAW:

[23] In law the Claimant must show the creation of the trust:

- (a) by express declaration or agreement or
- (b) by way of a resulting trust where she has directly provided part of the purchase price; or
- (c) from the common intention of the parties.

[24] It is clear from the pleadings and the evidence adduced at trial and rehashed in the earlier part of this judgment that the first two limbs mentioned above do not obtain in this instant suit. It is therefore pellucidly clear that the Claimant June Cornwall is relying on the third limb: Common Intention. It is trite law that to establish this limb of common intention there should be:

- (a) Part-payment of the purchase price or
- (b) regular contributions to the mortgage instalments or
- (c) payment of part of the mortgage or
- (d) substantial financial contribution to the expenses of the home or family so as to enable the mortgage payments to be paid – see the case of Cupid v

Thomas – Appeal No. 5 of 1984; St. Vincent and the Grenadines - it can be gleaned from this case that generally the mere fact that parties, as in this instant case, have lived together and do ordinary domestic tasks is no indication that they thereby intend to alter the existing property rights of either.

[25] There is no evidence adduced by June Cornwall that she made part payment of the purchase price of the house. There is also no evidence that she made regular contributions to the mortgage installments or paid part of the mortgage or made substantial financial contributions to the expenses of the family so as to enable the mortgage payments to be paid. In fact to the contrary, there is evidence that the Claimant worked for a meager sum of money weekly at Coreas Department Store and was out of work for nearly two years between 1993 and 1995, with five children to maintain. It is also in evidence that the defendant Crooke moved out of the house in issue in 1993 when communication had broken down between them.

[26] It is for this reason that I agree with learned Counsel for Simon Crooke, and also find it difficult to believe the Claimant when she stated in her evidence that she gave Simon Crooke money in 1995 to fix up the downstairs to completion. In fact she admitted in her evidence that from 1993 she knew nothing about who fixed the downstairs, and that it was Simon Crooke who dealt with the rental of the downstairs. I also find it highly unlikely to say the least, that June Cornwall would give money to her ex-boyfriend Simon Crooke to fix the downstairs when the upstairs where she lived remained in an unfinished state.

[27] From these exposes I find and hold the Claimant's story very difficult to believe. I have already referred to the fact that June Cornwall did not put in a single document to support her case. Whatever documents she eventually tendered in evidence were at the behest of counsel for Simon Crooke, and in any case these did not support her contention that the \$3,000 she had borrowed from the National

Commercial Bank was given to Simon Crooke for the purchase of materials for the house. I am more inclined to hold, and do hold that the \$3,000 was used by the Claimant for purposes other than to purchase materials for the repairs to the house. All in all the Claimant June Cornwall failed miserably to prove that the \$3,000 she borrowed was given to Simon Crooke to buy materials for the repairs to the house.

[28] Furthermore no evidence has come from the Claimant pertaining to the extent of her contributions to the upkeep of the home, bearing in mind the meagre sum she earned on a weekly basis from her employment at Coreas Department Store; and if she did contribute to the upkeep of the home, was this contribution substantial as to entitle her to a half-share in the house as she claims. As I said earlier, there is absolutely no evidence to assist the Court in answering this question. As a consequence I hold on a balance of probabilities that whatever contributions the Claimant may have made, they were not substantial enough to entitle her to a half share in the house.

[29] From the evidence as a whole there is no indication of any common intention to ground the Claimant as a beneficiary of a half-share in the house. The necessary requirements to establish this common intention are absent in this case.

[30] There is also the contention from June Cornwall that she helped in the construction of the house by carrying materials, running blocks, mixing cement and cooking for the workers. This is admitted to by the Defendant in his evidence. But then there is no evidence as to how often these tasks were performed from the Claimant. There is no evidence of how often she cooked for the workers, or who bought the food to be cooked. There is also no evidence of how much building material she carried or made, and how often. I agree with Learned Counsel for Simon Crooke that it was for June Cornwall to adduce this evidence, for the purposes of quantification, and for the Court to make a proper assessment or determination of her level of contribution. To go even further, the

Claimant valued the property at about \$110,000 without providing the Court with the basis for that valuation.

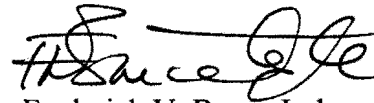
[31] In conclusion therefore, it is clear that the Claimant June Cornwall has woefully failed to meet the requirements of any of the criteria laid down in the case of *Cupid v Thomas* as referred to earlier in this judgment. On a balance of probabilities, and having regard to the whole of the evidence, June Cornwall's contribution if at all possible to quantify is at best negligible – so negligible as not enough to entitle her to a half-share in the house, and I so hold.

[32] What is in favour of the Claimant however, is the Defendant's assertion to the Court, that he has no problems if the Claimant June remains in the house with his children, especially the fifteen year old girl. Bearing in mind the Defendant's "magnanimity" on this issue I would order that the Claimant remain in the said house (upstairs) with the four children of the union until the children attain the ages of 18 years or sooner die whichever is the earliest.

ORDER:

- [33] (a) I therefore order that the Claimant's claim for a half-share of the house on a parcel of land situate at Richmond Hill in St. Vincent and the Grenadines being a portion of Lot 36 as described in Deed No. 244 of 1988 is hereby dismissed;
- (b) This Court also declares that the Defendant is the sole legal and equitable owner of the said house;

- (c) That the Claimant may be permitted to remain in the said house until her last child attains the age of 18 years.
- (d) That costs in the sum of \$3,000 be paid by the Claimant to the defendant.



Frederick V. Bruce-Lyle
HIGH COURT JUDGE