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ROYAL COURT
(Samedi Division)

27.

19th February, 1993

Before: P.R. Le Cras, Esq., Lieutenant Bailiff and Jurats Herbert and Rumfitt

Between	**Anthony Peter Cooley**	**Plaintiff**
And	**Gillian Wood**	**Defendant**
And	**Hambros Bank (Jersey) Limited**	**Party Cited**

Advocate W.J. Bailhache for the Plaintiff
Advocate M.M.G. Voisin for the Defendant

JUDGMENT

THE LIEUTENANT BAILIFF: The Plaintiff and the Defendant, having formed an association, invested in property in Portugal. To hold the property, they formed a Company in Jersey with the name Fedora Investments Limited in which each of them held fifty per cent of the shares, even though it was common ground that the Defendant had provided more of the capital for the purchase of the property known as Villas 108 and 110 Dunas Douradas ("the property") in the Algarve. This property has now been sold at a profit and the parties are in dispute as to how the proceeds should be divided between them.

This dispute arises not only with regard to the capital profit which was made but also as to the division of the net income which arose on the property whilst Fedora Investments Limited owned it; and as a subsidiary to these grounds the Plaintiff demands the return of some £12,053.10, which he alleges was drawn out of the Company's funds and wrongly paid away by the Defendant.

The Plaintiff's case is put in this way. Fedora belonged to the parties as joint beneficial owners, and that either on that basis or on the basis that if there were nothing in writing then by implication of law there should be an equal partnership, the assets of the partnership being the net value of the shares of the Company after paying out the loans due by the Company to each

shareholder. Alternatively it should be repaid according to the ordinary rules of Company Law.

The Defendant claims first that any payments out were either made for the Company or for the benefit of either or both the parties, and they were made with the knowledge and approval or alternatively with the tacit consent of the Plaintiff.

As to the sharing of the profits, the Defendant denies that the partnership falls to be treated as an equal partnership. She claims that each had agreed to provide fifty per cent of the purchase price but that the Plaintiff had failed, refused or neglected to provide his share. She further pleads that in December, 1988, or January, 1989, the parties agreed orally that the property be sold and subsequently the proceeds divided between the two in proportion to their initial investment in the Company.

Certain facts are agreed. First, the Plaintiff provided £30,840.00 towards the purchase price and the Defendant £69,862. Second, the property was sold for £161,472.00 after deduction of the Estate Agent's commission. Third, that there was some profit obtained from letting the property prior to sale, although the figures were disputed. Fourth, that after the sale proceeds had been remitted to Jersey, the Defendant removed, on the 25th August, 1989, £105,000.00 and on the 4th September, 1989, £10,000.00 from the Company's account.

The Plaintiff is aged 53. He has had a variety of occupations, not only as a draughtsman but more recently as a publican and bookmaker. He has in the past clearly had substantial liquid assets. He had met the Defendant in the Autumn of 1985 in Weybridge and, although married, as he still is, went to live with her at her house in Chobham in January, 1986. As racing was then snowed off, he went with her to Portugal, where they met a Mr. John Hammond who, it would seem, is an Estate Agent operating in the Algarve.

As racing was again snowed off in February, 1986, they went back to Portugal again in February, 1986, and this time they committed themselves to the purchase of the property. The purchase was by stage payments over 18 months from January, 1986. The Plaintiff paid the deposit, whilst the Defendant, who sold her house in Chobham and subsequently her business, provided the bulk of the capital and arranged the setting up of the holding company in Jersey.

Before dealing with the evidence it is perhaps as well to say at the outset that we find neither witness to be reliable and we have the gravest doubts about the safety of relying on any statement from either of them which is unsupported by independent evidence or is agreed.

In his evidence the Plaintiff claimed that the plan as outlined was that they would do everything "down the middle" that is that they would share the profits fifty fifty. Had he been asked for a written agreement, he would have felt that his integrity would have been sullied. He had not, he said, made an equal contribution because at the time he was not aware that the difference between the parties was so great. Although not directly challenged, we find this assertion coming from a man with his experience in business to be truly astonishing. He made no attempt subsequently when in funds to bring his share up to parity. He expected, he said, that it would be for their old age.

The property was rented out for a short time in 1986, during the whole of 1987 and 1988 and the first half of 1989. We will return to the proceeds arising from the renting in due course.

In 1989 Mr. Hammond advised them to sell. We should perhaps pause here because although the parties lived together apparently from time to time and dependent on the movements of the Plaintiff's wife, they did so not at the property, that is Dunas Douradas, but at one known as Quinta Mimosa, in respect of which the Plaintiff told us he claimed a half share. However, a letter was produced from the Defendant's Portuguese legal adviser stating that he was claiming £63,253.00. No evidence was put to us, apart from mere assertions of dubious weight, by the Plaintiff to contradict this.

Despite the hiccough caused by the purchase of Quinta Mimosa, the Plaintiff arrived there in February, 1988, after selling his business with a view to staying out of England until after the 6th April, 1989.

When it came to the sale of the property, Dunas Douradas, it was he said a joint decision. I seems that Mr. Hammond approached the parties early in 1989 and a sale was duly arranged and completed in July of that year.

The Plaintiff claimed that there was no discussion as to the split and in cross examination he said he became nervous because proper accounts were not being prepared although he himself appears to have done nothing about it. In a discussion he had he said he told the Defendant that he would expect normally "parity of capital to shareholding". He would, he said, said expect a half. Asked what he meant by the phrase "parity of capital to shareholding" he, in our view prevaricated, and not for the first time, by saying that he had expected to put in the same amount, and then that he thought he had put in more than he claims in his Order of Justice.

Subsequently the Defendant in terms told him, he said, that he could write out a cheque for £47,000.00.

The Defendant's evidence in chief was that after completing the sale the parties, then together, went on holiday to Troon. During late August it was agreed that the Plaintiff's share would be (in terms) 30% and hers 70%. She was anxious to settle with him; his wife, she said, was freezing his assets and she did not want her money involved. She worked out the figures; they had a copy each and agreed them. She was, she said, satisfied and they resumed their relationship in December, 1989, when they came to Jersey for a car auction. He said nothing, even when they went to the Bank together. She first learnt of his disagreement in April, 1990, when it came as a great shock. Since then she has had frequent difficulties and the Portuguese Police have been involved.

The Defendant was pressed on her evidence. She was asked whether it was agreed in late August that the split was to be 70/30, in reply to which she maintained that from the outset it had always been agreed that the split would be thus.

When asked whether this had been so from the beginning, she replied that she imagined so.

Towards the end of August they had agreed and they both wrote the figures down. They were, despite her earlier assertion, still discussing other business ventures but failed to agree on them. They had discussed the figures once or twice and they both wrote the division down. Her copy, she opined, was probably in the garage at Quinta Mimosa.

Asked specifically what she had agreed she replied that it was to get back the initial investment and then divide the balance 70/30.

They agreed that she would get £115,000.00 and he would get £47,000.00 plus a bit extra, and gave him a blank cheque.

She then added that they agreed not the exact figures but the percentages.

Neither side have produced this paper and we take leave to doubt whether it ever existed.

What was, however, clear from an examination of the accounts was that the Defendant obtained a value date for her two tranches amounting to £115,000.00 on the 25th August, 1989, whilst the Plaintiff obtained his later in September when she opened his account.

Her explanation was that this was an account about which his wife did not know and was hence placed in a denoted account.

Mr. Hammond's office was at the foot of the garden at Quinta Mimosa and this was convenient.

Certain other actions about this time appear to us to be relevant. According to the Plaintiff, he had, as the weeks passed, become worried that the money had not come through and, by his account, rang the bank on the 24th October, 1989, upon which the Plaintiff wrote to Hambros at once and insisted on joint signatures. The Defendant's reply in cross examination was that he had only insisted on joint signatures in January, 1990, to save himself from his wife.

Notwithstanding these problems there seems thereafter to have been yet another reconciliation when the parties came to Jersey in November or December, 1989.

When asked why the account was sent to her address at Weybridge in March, 1990, the Defendant replied that this was because they were once again living together, (though proceedings started at or about that time).

Our finding is that there was, in fact, no agreement specifically regarding the division of the capital profits before, during or after the sale of the property.

In these circumstances it falls to the Court to decide on the legal basis.

We have no doubt but that we prefer the arguments put to us by Advocate Bailhache. The parties formed a company to purchase the property, Dunas Douradas. They effectively lent the company different sums of money. These sums were detailed in the Order of Justice at paragraph 7 and they are to be repaid and the holders of the shares are then to receive the balance of the profit in proportion to their shareholding, that is 50% each. If the Court is wrong in finding that the proceeds should be apportioned in this way, and that the profits should be apportioned as if on a partnership then we come to the same conclusion.

There was no local authority put to the Court; the precedents relied on by the parties, so far as relevant, are very old. In those circumstances the Court finds the law is not settled and adopts the approach set out by, it would seem, the English Partnership Act, 1890, and I quote from 4 Halsbury 35, paragraph 200 at p.114:

> ***"Application of assets after dissolution. In settling accounts between the partners after a dissolution of partnership, the firm's assets, including any sums contributed by the partners to make up losses or deficiencies of capital, are applicable in the following manner and order:***

(1) in payment of the firm's debts and liabilities to persons who are not partners; (2) in repaying to each partner rateably what is due from the firm to him for advances as distinct from capital; (3) in repaying to each partner rateably what is due from the firm to him in respect of capital; and (4) in dividing any residue among the partners in the proportion in which profits are divisible.

In the absence of contrary agreement, the amount payable by the other partners in respect of the share of a deceased or outgoing partner is a debt from the other partners accruing at the date of death or dissolution, as the case may be."

We turn now to the disposal of the income of the property, and we propose to deal with this quite shortly. No form of accounting was kept by the parties who both claimed to have lavished sums of money on one another. We were given details of endless cheques and payments and received very little in the way of satisfactory evidence by either party. The Plaintiff claims that the Defendant did all the bookkeeping for the property and this we accept, though it is clear that on occasion he helped her.

The Plaintiff's assertion is that this was a pension fund for their old age and was to be kept separate, whilst the defendant asserts that it was to provide funds for their joint living expenses, including items for herself and the property Quinta Mimosa at which they from time to time resided; and where the Plaintiff apparently now resides having locked the Defendant out, leading to litigation in Portugal.

It is quite clear that the monies were used as the Defendant asserts. The first question for us to decide is whether they were so used with the Plaintiff's knowledge and assent.

Having heard the evidence of both parties we have no hesitation in finding that the Plaintiff well knew exactly what was happening and assented to the use of the funds as they were used by the Defendant. The claim under paragraph (11) of the Order of Justice for £12,053.10 is therefore struck out.

We have been addressed on the question of interest. In this case, we order that no payments of interest be made by either side to the other.

There are, it appears, odd sums in the account not related to the capital account; these too must be divided equally. If the parties cannot agree on the final calculation which arises then they must go before the Greffier.

Authorities

Re: Bowers, ex parte Owen (1851) 4 De G & S 351.

Peacock -v- Peacock (1809) 16 VES 49.

Robinson -v- Anderson (1855) 20 Beav 98.

Hugh Stevenson and Sons -v- AKT Sur Cartonagen (1918-19) All ER 600.

Spartoli -v- Constantinidi (1872) XX Weekly Reporter 823.

Darby -v- Darby (1856) 3 Drewry 992.

4 Halsbury 35: p.114: para. 200.