

1 IN OPEN COURT  
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
3 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

15-10-04

6 CAUSE NO. 278 OF 2002  
7 LEGAL AID NO. 111 OF 2000

9 BETWEEN:

10 NOREEN ELIZABETH CONOLLY

Plaintiff

13 AND: HANKLIN EBANKS

Defendant

17 **Appearances:**

18 **Counsel for the Applicant: Ms. Keva Reid of McKinley Reid**  
19 **The Respondent in person**

21 **Before: The Hon. Justice Levers**

23 **Heard: 18<sup>th</sup>, 19<sup>th</sup> & 20<sup>th</sup> August, 2004**



25 \_\_\_\_\_  
**JUDGMENT**  
\_\_\_\_\_

28 **Levers, J.**

30 The Plaintiff by way of Writ of Summons and Statement of Claim claims:

- 32 1. The Rectification of the Land Register in order to have the title to a  
33 piece of land referred to as Registration Section Breakers Block  
34 48C, Parcel 207, transferred back into the joint names of the Plaintiff  
35 and the Defendant;
- 36 2. Further or in the alternative Damages for Breach of Contract;
- 37 3. Interest pursuant to Section 34 of the Judicature Law on any  
38 damages awarded to the Plaintiff to have at such rate and for such  
39 period as the Honourable Court shall deem just;
- 40 4. Further and/or other relief;

1           5. Costs.  
2

3           The brief facts are that on or around December 1997, a Sales Agreement for  
4           a piece of land in the Registration Section of Breakers Block number 48C  
5           Parcel number 207 for the sum of \$16,000 was executed between the  
6           vendors Corrairie F. Wood and William Wood and the purchaser and Ms.  
7           Noreen Ebanks. It is common knowledge that Noreen Ebanks was really  
8           Noreen Conolly. She signed as Noreen Ebanks, because she said Mr.  
9           Ebanks and she were engaged and were due to get married shortly.  
10          Although, she alone signed the agreement, the property was being purchased  
11          jointly with Mr. Ebanks.

12  
13          In accordance with the terms of the agreement, the purchasers provided the  
14          sum of \$2000 in cash as deposit. The transfer of the land was undertaken on  
15          the 16<sup>th</sup> January 1998, registering the transferees as Mr. Ebanks and Ms.  
16          Conolly.

17  
18          The Plaintiff alleges that she paid the \$2000 deposit and also the stamp duty  
19          of \$1200 and further transferred \$2500 worth of her shares with the Civil  
20          Service Association Credit Union into Mr. Ebanks account to help finance the  
21          balance of the purchase price. It is alleged that the parties became engaged  
22          to be married and in or around December 1999, the Defendant suggested to  
23          the Plaintiff that they should set a wedding date. The 5<sup>th</sup> August 2000 was to  
24          be the date. However, prior to this, as the Plaintiff was going through her own

1 divorce, the Defendant advised the Plaintiff that she should transfer the title  
2 which was in their joint names to him on condition that he would transfer it  
3 back to her after the divorce proceedings. Therefore another transfer of land  
4 Deed was executed in February 1999 and registered in April 1999, giving the  
5 land to the Defendant alone.

6  
7 The Plaintiff states that the Defendant and she commenced cohabiting from  
8 March 1999 in her home and that she was unaware of the transfer being  
9 registered on the 8<sup>th</sup> April 1999. The transfer did not have a consideration  
10 placed on it, at the time the Plaintiff signed it and she states that she had no  
11 knowledge of the sum of \$8000 being placed as consideration on the  
12 document. She states that subsequently she and the Defendant between  
13 1998 and October 1999 worked on the property together paid all the bills from  
14 joint funds and that it was their intention that the property that was being  
15 developed would be the matrimonial home when they got married.

16  
17 She further says that in or around July 2000, the Defendant admitted to  
18 having a relationship with another woman and terminated the relationship with  
19 her by leaving her house on or about the 23<sup>rd</sup> August 2000. That by this time  
20 the property had been developed to the extent that the matrimonial home had  
21 been built to the level of the belting. She states that when she discovered  
22 that the Defendant had transferred the property into his sole name, she asked  
23 that the Defendant transfer the property back into their joint names as she

1 was now divorced. The Defendant refused to do so in breach of the  
2 agreement. It is further alleged that the Defendant subsequently married the  
3 other woman on the 26<sup>th</sup> August 2000. Based on these facts, the Plaintiff  
4 claims Recession or Damages for Breach of Contract.

5  
6 The Defendant admits becoming a joint proprietor of the property described  
7 as Block 48C Parcel 207, in or about January 1998. He pleads that the  
8 purchase price was not \$18,000 but \$16,000 and he denies that the Plaintiff  
9 made any contribution towards the purchase of the property except by way of  
10 payment of the initial deposit of \$2000. He states that he borrowed money  
11 from the Civil Service Association to complete the purchase and denies that it  
12 was the intention of either the Plaintiff or himself to build the house to be their  
13 matrimonial home. The Defendant further denies he was engaged to the  
14 Plaintiff or that a wedding date was set. He states categorically that the only  
15 reason the final transfer was done to his name alone was because he was the  
16 true owner of the land and that it was he who made all of the payment for the  
17 purchase of the property. He admits going before the Justice of the Peace  
18 Mr. McCoy to sign the land transfer and states that the consideration of the  
19 transaction was left blank at the time of signing, as he was unsure of how the  
20 stamp duty calculation should be determined. He states further that on or  
21 about the 8<sup>th</sup> April 1999, the Defendant and the Plaintiff attended at the Land  
22 Registry and the sum of \$8000 was inserted and initialled by both the Plaintiff  
23 and the Defendant. He denies cohabiting with the Plaintiff at any time and

1 claims their relationship ended in 1999, but that they remained friends  
2 through the year 2000. He denies that they had a blue print for the building  
3 and states that the house is even now only partially completed. Finally, he  
4 states that the Plaintiff transferred the property to him with full knowledge and  
5 consent that the Defendant was the one making full payment to the vendor for  
6 the property, and therefore the property was his.

7  
8 When the defence was filed, the Defendant was represented by attorneys.  
9 However, in or about May 2003, a Notice of Intention to Act in person was  
10 filed by the Defendant. It is worthy of note that the Defendant had intended to  
11 act for himself from May 2003 because at the trial of this action, the  
12 Defendant did not ask for legal aid, did not wish for an attorney to represent  
13 him, but at the end of the trial after the evidence was completed, he asked the  
14 Court for permission to seek an attorney. That request was denied by the  
15 Court.

### 16 17 **The Plaintiff's Evidence**

18  
19 The Plaintiff gave evidence in support of her case and the chronology of the  
20 events according to her are:

21  
22 December 1997 Execution of an Agreement for Sale.

|    |                              |   |
|----|------------------------------|---|
| 1  | 16 January 1998              | Transfer of land together with payment of a       |
| 2  |                              | \$2000 deposit and \$1200 for stamp duties.       |
| 3  |                              | Payments made by the Plaintiff.                   |
| 4  | January 1998                 | Plaintiff transfers \$2500 of her shares into the |
| 5  |                              | Defendant's account at the Credit Union to        |
| 6  |                              | enable him to get a loan.                         |
| 7  | Early 1998                   | The Plaintiff applies to Cayman Civil Service     |
| 8  |                              | Housing Assistance Program Loan Application       |
| 9  |                              | for \$30,000 to develop the property and start    |
| 10 |                              | construction. The loan not completed because      |
| 11 |                              | of the lack of documentation.                     |
| 12 | February 1999                | Transfer of property to the Defendant alone       |
| 13 | January 1998 to October 1999 |   |
| 14 |                              | Plaintiff and Defendant clear the property and    |
| 15 |                              | fill the property.                                |
| 16 | March 1999 to August 2000    |   |
| 17 |                              | Plaintiff and Defendant cohabit.                  |
| 18 | October 1999                 | The intended matrimonial home construction is     |
| 19 |                              | commenced.  |
| 20 | 23 August 2000               | The intended matrimonial home has been built      |
| 21 |                              | up to belting and the Defendant leaves the        |
| 22 |                              | Plaintiff's home to get married to another        |
| 23 |                              | woman on the 26 <sup>th</sup> August 2000.        |
| 24 |                              |   |

25 In support of her claim, the Plaintiff produced:

26

- |    |    |   |
|----|----|---|
| 27 | 1. | An engagement ring – Exhibit 1              |
| 28 | 2. | An agreement for sale – Exhibit 2.          |
| 29 | 3. | A transfer of land – Exhibit 3              |
| 30 | 4. | A tape recoding and transcript – Exhibit 4. |
| 31 | 5. | A bundle of letters – Exhibit 5.            |



1 Exhibit 5 –

2 A bundle of letters left by the Defendant in the Petitioner's home where he says  
3 he was not residing. These letters were introduced to show the Court that the  
4 Defendant was in fact residing there and not only visiting on occasions (as he  
5 has put it to Mrs. Conolly in cross-examination).

6

7 Exhibit 6 –

8 A letter to Director of Prisons, in which the Respondent has written Noreen  
9 Conolly. Counsel for the Petitioner wishes the court to look at the word letters N  
10 and C therein and infer that the initials which were written on the transfer bear a  
11 striking resemblance to those letters in the letter. I will deal with that at a later  
12 stage.

13

14 There is no dispute that the land was transferred to the Defendant alone on the  
15 5<sup>th</sup> February 1999 and registered in April 1999. The reason for that transfer is  
16 the crux of this case. The Plaintiff alleges that they went before the J.P. Mr.  
17 McCoy to execute the document. Mr. McCoy gave evidence and stated that the  
18 Plaintiff attended his premises to execute a transfer in his presence and that he  
19 witnessed her signature. He states that the Defendant gave him a reason for the  
20 transfer and told him that as the Plaintiff was going through a divorce, in order  
21 that her husband could not claim on this piece of land, the transfer was being  
22 undertaken. He further said that the Defendant explained that it was being done  
23 only as a safe guard. Mr. McCoy was of the opinion that the Plaintiff only signed

1 the transfer as she was assured by the Defendant that it would be transferred  
2 back to her after her divorce was finalized. It is noted that the land was to be  
3 transferred back to her after her divorce was finalized and no other conditions  
4 such as marriage was attached to the execution of the transfer. The Plaintiff  
5 states that having signed the transfer there was no consideration entered on it in  
6 her presence and that subsequently, unbeknown to her in April 1999, the  
7 Defendant took the transfer to the Registrar of Lands and at that time entered the  
8 \$8000 and inserted her initials "NC" onto it. That she was not in attendance with  
9 him when the consideration was endorsed on the land transfer. Counsel for the  
10 Plaintiff asked the Court to look at the initial NC and compare it with the letters  
11 NC on the letter to the Director of Prison's - Exhibit 6 and infer from it that in fact  
12 it was the Defendant who must have placed those initials and not the Plaintiff.  
13 The Plaintiff denies ever placing those initials thereon.

14

15 The next witness on behalf of the Plaintiff was Mr. McCoy, the JP who witnessed  
16 the transfer documents. Mr. McCoy says that the parties visited him on two  
17 occasions but on the final occasion the 5<sup>th</sup> February 1999, the transfer deed was  
18 executed giving the land to the Defendant. That at the time Mr. McCoy advised  
19 the Plaintiff not to sign the transfer because her husband would not have an  
20 interest in this land and that if she did sign the transfer she would loose all her  
21 rights to the land. That he recalls Mr. Ebanks advising him that he is only doing it  
22 to safeguard the Plaintiff's interest in the land and that immediately the divorce  
23 was over, he would transfer it back to her. He recalls the Defendant assuring the

1 Plaintiff that this would be the case and that the transfer was meant to be  
2 temporary. It was then that he says although, she seemed reluctant she signed  
3 the transfer in his presence. He states that when the transfer document was  
4 signed the consideration of \$8000 was not on the Deed. He was cross-examined  
5 by the Defendant and admitted it was a legal transfer as far as he knew and that  
6 he had no reason to lie about the explanation given by the Defendant to him as  
7 to why he was transferring the land to himself. He denies that the Defendant  
8 told him it was because he was the true owner. He confirmed the Plaintiff's  
9 version of the reason for the transfer.

10

11 The next witness called by the Plaintiff was Karen McLaughlin who was a  
12 neighbor at 471 Austin Connolly Drive. She says that in the year 1999, she saw  
13 the Defendant living with Mrs. Conolly and that she saw him most mornings and  
14 evenings during 1999 to 2000 at the Plaintiff's residence when she would talk  
15 with him. She says, she saw the Defendant and the Plaintiff sitting talking to  
16 each other frequently and calling each other "love names". In cross examination,  
17 the Defendant put it to her that he was paying rent elsewhere from January 1999  
18 to August 2001. She denied knowing of rent being paid but confirmed that she  
19 saw him frequently from the year 1999 to 2000 at the Plaintiff's residence and got  
20 the distinct impression that he was living there.

21

22 The final witness was Morrison Blackman, Secretary to Mrs. Reid who  
23 transcribed the tape. That was the case for the Plaintiff.

1

2 It is important to note at this stage that the Defendant did not produce any rental  
3 receipts to show that he was living elsewhere, although, he put it to the Plaintiff in  
4 cross-examination that he was living in rented premises from October 1999 to  
5 May 2000 and from June 2000 to October 2000, that he was staying at his  
6 mothers house.

7

8 **The Defendant's Evidence**

9

10 The Defendant himself gave evidence and he said he was not engaged to the  
11 Plaintiff. He did not recognize the ring that she produced as the engagement ring  
12 and said that he did not live with the Plaintiff on a regular basis. That he was  
13 together with the Plaintiff as boyfriend and girlfriend from 1997 to 1998. He  
14 admitted that she paid \$2000 towards the deposit of the land and that it was in  
15 fact her idea that they purchase the land from a Mr. Wood. That she lent him  
16 that money and he accepted it and he admits that he owes her \$2000 the sum of  
17 the initial deposit. Remarkably, he states he does not know how her name got  
18 on the land if the \$2000 was a loan and states that the vendor must have put her  
19 name on it. He says that she co-signed for the loan of \$14,000 for the balance of  
20 the purchase price of the land from the Credit Union and that he in fact paid all  
21 the mortgage payments. After the land was paid for in full and the debt paid off,  
22 he asked her to transfer the land to his name. He states categorically that he  
23 doesn't believe Mr. McCoy is lying, but that he recalls telling Mr. McCoy that the

1 land belonged to him as proprietor because he made all the payments for it and  
2 that is why he transferred the land to himself. He states that the Plaintiff and he  
3 separated in 1999 and that in fact they were just good friends thereafter. That at  
4 the time of the transfer back to him in February 1999, they were just good  
5 friends. Importantly, he states that in April 1999, when the sum of \$8000 was  
6 agreed as the consideration to be placed on the Deed of Transfer that Mrs.  
7 Conolly, the Plaintiff initialed that \$8000 figure on the document at the Land  
8 Registry. In cross-examination he denied there was ever any intention to build a  
9 matrimonial home on the land. He admits that he owes the Plaintiff \$2000 and  
10 stamp duty of \$1200 and that if, in fact, she can prove that the \$2500 in Shares  
11 was transferred to his account, he would owe her that sum too. He admits going  
12 to Mr. McCoy but denies the reasons given by Mr. McCoy for the transfer of the  
13 land to him alone. He agrees that her initials against the \$8000 look different on  
14 the final transfer, but insists that the consideration was initialed by her and that  
15 he did not place her initials on the document. Those initials are not witnessed by  
16 anyone.

17

18 He then called Miss Dilbert from the Land Registry. The purpose of calling this  
19 witness was that she supported the Defendant, as she stated that the Plaintiff  
20 was in attendance at the Land Registry to initial the consideration that was  
21 placed on the land transfer to the Defendant alone and that in fact, she recalls  
22 the Defendant being present in her office. In cross-examination she admitted  
23 that she saw 80 to 100 people in any one day and that there was no reason why

1 she should necessarily remember any particular attendance. She admitted and  
2 that it is true to say that if the document was not initialed in her presence, she  
3 would have been in some sort of difficulty explaining why she accepted the  
4 document. She also stated that the Plaintiff was wearing a pink uniform with a  
5 piece in front in pink like an apron when the Plaintiff came to her office to initial  
6 the document. She recalls giving her statement about the incident some 6  
7 months after April 1999, when a lawyer approached her. The Writ of Summons  
8 was filed over 2 years later and therefore this recollection would be inaccurate.

9

10 The next witness was the Defendant's mother. This witness was called to  
11 confirm the Defendant's story that he was living with her. She stated in evidence  
12 that her memory is not clear, that he was there for several months from  
13 September 1999 and that sometime in 2000, he came back there again. She  
14 stated however, that he slept most nights there but spent three or four nights out  
15 of the residence. In cross-examination, she said when he informed her that he  
16 was renting, she accepted his word for it. That she never visited the rental  
17 places nor, saw any confirmation thereof. She said that the Defendant asked her  
18 to testify and she told him that she doesn't remember the dates but, she would  
19 come and do her best. That was the case for the defence.

20

21 The Defendant at the end of the case for the defence applied to recall the  
22 Plaintiff. The Court allowed some lee way to the Defendant, as he was un-  
23 represented. He put it to her that she was telling lies about living with him and

1 she denied it. She said that she washed his clothes and had clothes in the  
2 house and that they met one another in January 1997, that she admitted he paid  
3 for the legal fees for her divorce in March 1997. It was the Plaintiff's claim that  
4 they were together as boyfriend and girlfriend from that time to August 2000.  
5 She denied that the initials were hers on the land transfer and she said that she  
6 has never worn a uniform of the description that Mrs. Dilbert described her as  
7 wearing and that she had never gone to the Land Registry to sign the  
8 documents.

9

10 The questions to be answered in this case are:

11

- 12 1. Was there an intention to purchase the land jointly because  
13 the parties were getting married?  
14
- 15 2. Did the parties intend to have this land developed as a  
16 matrimonial home?  
17
- 18 3. Was the transfer done to the Defendant himself in February  
19 1999, on the Defendant's promise that it was only being  
20 done to safeguard her interest from her first husband in the  
21 divorce and that the land would be transferred back to her  
22 sometime after her divorce was finalized?  
23
- 24 4. And was there therefore, a Breach of Contract and is the  
25 Plaintiff entitled to damages as a result thereof?

26 The evidence in answer to all these questions is:

27

- 28 1. Did the parties intend to get married?

29

1 I find as a fact that the parties were engaged. I believe the Plaintiff when she  
2 states that her name was put on the land transfer when the land was  
3 purchased from Mr. Wood because the parties intended to get married. The  
4 response to the engagement ring when shown to the Defendant was that he  
5 did not recall giving the Plaintiff a ring. I need not say more than the fact that  
6 the purchase of an engagement ring is not something that one does not  
7 recall. Either, the Defendant must remember it or deny it. He does neither.

8  
9 2. Did the parties intend to develop the land and to build their matrimonial  
10 home thereon?  
11

12 I find as a fact that the parties did intend to develop this land and build their  
13 matrimonial home. There is evidence that the Plaintiff applied for a loan for  
14 the building of the house to the Credit Union. There is also evidence that the  
15 Defendant assisted the Plaintiff in filing out the application forms. The  
16 Plaintiff alleges that she assisted the Defendant in clearing up the land and  
17 buying fill and making one or two mortgage payments. Even, if she didn't, the  
18 fact that she paid the deposit on the land, the fact that she paid off the stamp  
19 duty, the fact that she transferred her shares at the Credit Union to enable  
20 him to get a loan and the fact that the land was purchased in two names,  
21 although the parties were not married, to my mind supports her assertion that  
22 it was the intention of the parties to build their matrimonial home thereon.

23  
24 3. Was the transfer done in February 1999 on the Defendant's promise to  
25 transfer the land back to the Plaintiff once her divorce was finalized and

1           was the reason for the transfer that the Defendant intended to protect the  
2           Plaintiff from the first husband's claims?  
3

4           The answer to this can be found in the surrounding circumstances and the  
5           actions of the parties. The Court is reminded that the Plaintiff's allegation is  
6           that she was going through her divorce and this is why this was done to  
7           safeguard her from any claims from the first husband. The Plaintiff was going  
8           through a divorce and if there was no other evidence but just the evidence of  
9           Mr. McCoy himself who one would call a credible independent witness with no  
10          axe to grind it would be sufficient to conclude that the reason for the transfer  
11          was as stated by the Plaintiff. Further, even if I didn't have Mr. McCoy, it  
12          would be difficult for me not to come to the same conclusion in view of the  
13          fact that the Defendant's allegation is that the Plaintiff and the Defendant had  
14          broken up by this time. The Defendant is asking this Court to believe that a  
15          Plaintiff would sign over the land to him without any compensation  
16          whatsoever based on the fact that he was the owner of the property. He  
17          admits that she put a deposit on it. That I find unbelievable. I have no  
18          hesitation in finding that the Defendant did make this promise to the Plaintiff  
19          and that that is why she signed the transfer.

20  
21          4. Is the Plaintiff entitled to damages for Breach of Contract or Rescission?  
22

23          Once I have accepted the above. It has to be decided whether there was a  
24          contract and whether that contract has been breached and the Plaintiff  
25          entitled to damages or Rescission? Where in circumstances there has been

1 expenditure by the Plaintiff, she has acted to her detriment in the expectation  
2 or belief that she had sufficient interest in the property to justify the  
3 expenditure and such expenditure and actions of the Plaintiff were  
4 encouraged by the Defendant, the Plaintiff is entitled to Damages. I therefore  
5 make the following Orders:

- 6
- 7 1. That the Plaintiff is entitled to damages for Breach of Contract to the 23<sup>rd</sup>  
8 August 2000.
  - 9 2. Costs to the Plaintiff, to be agreed or taxed.

10

11 Dated this 15<sup>th</sup> day of October, 2004

12  
13  
14  
15 Levers, J.  
16 Judge of the Grand Court

