



Supreme Court of Queensland

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Chapmann v. Green [2002] QSC 65 (25 March 2002)

Last Updated: 25 March 2002

SUPREME COURT OF QUEENSLAND

[\[2002\] QSC 65](#)

File No S10995 of 2000

BETWEEN:

JUDIANN CHAPMANN

Plaintiff

AND:

DAVID IAN GREEN

Defendant

MOYNIHAN J - REASONS FOR JUDGMENT

DELIVERED 25 March 2002

ON:

HEARING 11-13 March 2002

DATE/S:

ORDER: **The plaintiff and the defendant cohabited as de facto spouses within the meaning of ss 260 and 261 of the *Property Law Act 1974* from February/March 1993 to October 2001**

CATCHWORDS: PROPERTY LAW ACT - PART 19 - DE FACTO RELATIONSHIPS - what constitutes a de facto relationship under the Property Law Act - whether the plaintiff and defendant cohabited as de facto spouses within the meaning of ss 260 & 261 of the Property Law Act from February/March 1993 to October 2001 - where plaintiff has suffered a brain aneurism - where competing witness stories

COUNSEL: Mr M Martin for plaintiff

Mr J A. Logan for SC for defendant

SOLICITORS: Hirst & Co for the plaintiff

Hunt & Hunt for the defendant

[1] The plaintiff has a claim under Part 19 of the *Property Land Act 1974*. The part deals with property claims based on de facto relationships.

[2] On 12 September 2001, Holmes J ordered a separate determination of the issue of the

existence, duration, continuance or otherwise of the de facto relationship between the plaintiff and the defendant and gave consequential directions

[3] As a consequence of brain injury following an aneurism on 13 December 2000 the Public Trustee was appointed the defendant's litigation guardian and retained solicitors and counsel who acted on the defendant's behalf. Dr Yelland, a specialist in the field of geriatric medicine, who was responsible for the defendant's care and rehabilitation, gave evidence that he could successfully carry on a "reasonably complicated" conversation and could "get across" what he wanted to say. If repeatedly pressed or challenged however, he could become less coherent and his evidence less reliable. In any event his evidence as to detail, eg dates and sequences, was unreliable. Prior to his discharge from hospital in June last year the defendant had seemed susceptible to what was said to him by others but Dr Livesey was unable to make a comment as to the current position.

[4] Part 19 - Property (De Facto Relationships) of the *Property Law Act* 1974 came into force on 21 December 1999. Section 261 of the Act is to the effect that a de facto relationship "is the relationship between de facto spouses". By s 260 of the Act a de facto spouse is either one of two persons who are living or who have lived together "as a couple".

[5] By subs (2(a)) two persons are a couple if they "live together on a genuine domestic basis in a relationship based on intimacy, trust and personal commitment to each other."

[6] The plaintiff was born on 2 June 1941, and was married but the marriage was over prior to the events arising for consideration here. She had four children, one of whom had been adopted. The defendant was born on 30 September 1933. He has never married, has no children, and prior to the events in issue here does not appear to have had a close or lasting association with a woman. He has a twin brother John, to whom he is close. Over the years the brothers have been associated in business ventures. John Green strongly dislikes the plaintiff and is determinedly resistant to her having any claim against his brother on the basis of a de facto relationship.

[7] It is convenient to mention here that it was no part of the plaintiff's case that the defendant had a commitment to marry her or that he referred to her as his de facto wife.

[8] The parties met in late 1992. The plaintiff was living with an acquaintance of the defendant with whom she had previously had a short relationship. The plaintiff and the defendant started to go out together and early in 1993 embarked on a relationship.

[9] Shortly after they did so the plaintiff and the defendant commenced to cohabit in the defendant's house at 49 Gloucester Street, Spring Hill. The plaintiff who had experience in the hospitality industry and motels commenced to do cleaning work at the Dahl Court a motel owned by the defendant and operated by a company, which he controlled. As her relationship with the defendant evolved she became actively involved in all facets of the operation of the motel.

[10] The house in which the plaintiff and the defendant resided is situated in Gloucester Street. Phillips Street intersects with Gloucester Street. The two streets are in an area of Spring Hill bounded by St Paul's Terrace and Boundary Street, Spring Hill. The defendant owns a number of properties in the Gloucester and Phillips Streets precinct. One of the witnesses described it as a "world in itself". The defendant had acquired Dahl Court long before he met the plaintiff. The property was operated initially by John Green. The defendant came to Brisbane and undertook the improvement and refurbishment of Dahl Court. He later extended the motel and carried out improvements at the Gloucester Street house. In 1999 he acquired and embarked on the construction of town houses on land adjacent to 49 Gloucester Street.

[11] The defendant admitted that:

"By a date unknown in the mid 1990s the plaintiff and the defendant were living together as a couple in a de facto relationship at a residence situated at 49 Gloucester Street, Spring Hill in the State of Queensland" and that; "such a relationship continued for a time at 49 Gloucester Street, Spring Hill until the mid 1990s."

[12] The defence went on to plead:

"... the defendant's litigation guardian is not able to ascertain with any greater accuracy than to the extent admitted and hereafter alleged, the commencement and the duration after its commencement of the relationship between the plaintiff and the defendant.

(d) any such relationship between the plaintiff and the defendant either at 49 Gloucester Street or elsewhere wheresoever had concluded prior to 21 December 1999; and

(e) the plaintiff and the defendant have not since then resumed any such relationship and do not presently live in any such relationship "

[13] There is ample evidence supporting the conclusion that the parties lived together on a genuine domestic basis in a relationship based on intimacy, trust and personal commitment from early 1993. They lived together in the house at Gloucester Street in a domestic and sexual relationship. The plaintiff carried out domestic duties, she chose the defendant's clothes and furnishings for the house. The parties socialized together and were regarded as a couple and received joint invitations.

[14] The defendant got on well with the plaintiff's children. There were relatively frequent contacts. The children stayed at the motel from time to time. He was a godfather to the plaintiff's granddaughter, Millie of whom he was fond and supportive and Millie's mother, Samantha. The extended family and others spent Christmases together.

[15] The plaintiff received some payment, it does not seem to have been particularly generous, for her work in the motel otherwise the plaintiff was essentially dependant on the defendant.

[16] Although, no doubt the defendant ultimately made the decisions about his business affairs, I accept that he and the plaintiff discussed them; she was knowledgeable about his business affairs.

[17] Even John Green was constrained to acknowledge "a form of relationship appeared to develop ..." and to grudgingly accept "there may have been a period in time when they had a relationship, the exact details of which I can't be certain." He also acknowledged his brother was "quite secretive about his personal affairs and didn't discuss them at any great length with me."

[18] The essential issues, which emerge from these considerations, are whether the parties de facto relationship ended before 21 December 1999.

[19] On 29 July 1998 the plaintiff underwent the first of a series of operations for a bladder condition. She had further operations on 29 November 1999 and 14 February 2000. The condition was troublesome, its treatment was prolonged and painful until 25 July 2000 when the plaintiff underwent a bladder implant operation which assisted considerably in alleviating her condition and her health commenced to improve.

[20] The plaintiff's condition and its treatment were debilitating and she found her work at the motel increasingly burdensome. This was added to when the defendant commenced the development of his adjacent properties. The communications link between the house and the motel was severed so that the plaintiff had to go to the motel more often. The development meant the plaintiff had to take a more taxing route to get there. Building activities encroached on the Gloucester Street house, in terms of shortened material and the like.

[21] These considerations led the plaintiff to commence making extensive use of unit 2 at the motel as a residence so as to make her workplace more accessible, and her daily activities associated with the conduct of the motel less demanding. I should mention that during this period the defendant was preoccupied with the development activities on his adjacent land. He was involved in them from early in the morning and from time to time was stressed by difficulty, which arose, culminating in a dispute with the builder.

[22] Neither the plaintiff nor the defendant abandoned the Gloucester Street residence. I accept the evidence of Mr Alverstrand who was a friend of the defendant who stayed at Dahl Court for a long period. He was residing there for some months from October 1999, overall moving from room to room as the requirements with the motel dictated that, and also staying in a house in the vicinity.

[23] There is no apparent reason why Mr Alverstrand would give false evidence contrary to the defendant's interest.

[24] He described the defendant as going back and forth between the house and the unit occupied by the plaintiff in the motel and the plaintiff as going back and forth from the house. It was difficult to distinguish where they were, he'd be up with her or she'd be down with him. He observed no difference in their relationship; they were usually together during the nighttime.

[25] In February 2001 Mr Alverstrand disagreed with John Green when he said that there had never been a relationship between the plaintiff and the defendant and Green told him to "keep out of it otherwise you will be in trouble". He gave evidence of other unpleasant exchanges with John Green later.

[26] Mrs Q Lee was the wife of a friend of the defendant and in that context came to know the plaintiff as she stayed at the motel from time to time. She gave evidence supporting the inference that the plaintiff and the defendant were a couple. She recalled, among other occasions, New Year's Eve 1999, where she, her husband and son stayed with the plaintiff and the defendant at 49 Gloucester Street.

[27] The plaintiff acted, as hostess and the defendant gave no indication that her role was any different to any other time she had visited. Later in 2000 the defendant showed her husband and her over the newly built houses and they then had coffee with David and Judiann on the verandah of the house.

[28] I accept the evidence of Ms Hiller, a neighbour of the parties she visited them in the motel unit after the construction work had commenced. She wanted to catch the defendant before he commenced work to raise her concern about property and material he had stored under her premises. She was greeted by the plaintiff in her nightclothes and the defendant was in the bed.

[29] The defendant endeavoured to imply that the occasion had been contrived by the plaintiff to incriminate him, insinuations that he may have been drugged. The evidence is far from supporting such an explanation.

[30] Mr Green, the builder engaged by the defendant in the development work, first met the plaintiff and the defendant about two months prior to the commencement of the work. The plaintiff was present during most of his meetings with the defendant and they "looked at each other and discuss things", although in the end the defendant made the decision. So far as his observations were concerned they, the plaintiff and the defendant, were living in a relationship.

[31] Token evidence was put forward by the plaintiff supporting the inference of a continuing relationship, which I accept. It is, however, unnecessary to traverse it in detail.

[32] The plaintiff found the defendant after he suffered his aneurisms and accompanied him to hospital. She visited him in hospital and attended to his needs. The defendant was discharged into the plaintiff's care at the direction of the Adult Guardian on 28 June 2001. I am satisfied she took appropriate care of him when she was responsible for his care. John Green made it clear in his evidence that he regarded this as a mistake. At his instigation there was a series of interventions by the Guardianship and Administration Tribunal, which it is unnecessary to recount in detail. In the end the relationship between the plaintiff and the defendant broke down under the pressure of John Green's attitude and these events.

[33] I have already said something about John Green and his evidence, including that his brother was secretive about his personal affairs and didn't discuss them at any length. In an affidavit sworn on 8 December, he stated that from his observations in the last two or three years the plaintiff had been living separately within the Dahl Court complex.

[34] In cross-examination to a suggestion that the plaintiff had moved out of the Gloucester Street house he responded because of her disability by answering "that's what she said". He went on to say that she was living in the Dahl Court unit before March-April 2000 "I didn't follow her around but I knew that she wasn't living at 49 Gloucester Street because I was there and I never saw her there at the time."

[35] In para 13 of his affidavit, John Green deposed that over ten years during a typical month, he would on average spend 1 weekend a month with the defendant at Spring Hill. When taken in cross-examination to his evidence that he spent on average three nights a week there he said that that was not entirely so over the last ten years but was generally right for the last four or five years. It was put that he did not spend three nights a week, even in the last four to five years and he answered, "no that is correct because I would get up very early to go back to work and I spent the night there".

[36] John Green said he never saw the plaintiff living in the unit but knew she did because he knew she took furniture up there and painted it, although "he didn't follow her around". He said he wouldn't know if his brother stayed with the plaintiff in the Dahl Court unit, but then said that he knew where his brother was and so far as he was concerned he was with him. When it was pointed out to him that he wasn't there every night he answered "No, not every night. Of course the nights when I was there I can say that".

[37] When taken to the unchallenged evidence that the plaintiff's son, Kim Chapman, had lived at 49 Gloucester Street for some 4 months from October 1999. He answered "I didn't know where he lived ... he was working in the place so he was living somewhere but I didn't know where." Ultimately he grudgingly acknowledged that if Kim Chapman was living in the front room for that period he could not have been. Asked whether in December 2000 there was any sort of relationship between the parties and he answered, "Certainly not a loving relationship or even a decent relationship. He was not interested in doing anything with her except what she was supposed to be doing, cleaning".

[38] Put shortly I do not regard John Green as a reliable witness with regards to the relationship between the parties.

[39] A Mrs Shirley Moir gave evidence in the defendant's case. She had known the defendant before he came to Brisbane. She deposed she had received a phone call from the plaintiff at about the time the defendant was being discharged from hospital. The plaintiff complained about the defendant's meanness with money, using such phrases as "we girls should stick together" and asked her to swear an affidavit as to the length of the relationship between the plaintiff and the defendant. The plaintiff, she said, told her that if she assisted the plaintiff she would "look after me". The plaintiff was not cross-examined in respect of these passages. When taken to para 20 of her affidavit, which dealt with them, she said, "yes, I can read. Well the word and the word 'affidavit' is there I grant you that, but maybe it was placed there, as the way the sentence went along but, no, Judiann never said anything like that to me."

[40] "Paragraph 20 of your affidavit is not correct"? She was then asked and replied, "not correct in the way you're reading it." Mrs Moir was also evasive in cross-examination in respect of an incident when she spoke to the defendant about the use of premises he owned in Sydney, apparently for the purpose of prostitution. Viewing it in its most favourable light one wonders as to how the affidavit came to be sworn in the terms in which it was.

[41] I find the plaintiff and the defendant cohabited as de facto spouses within the meaning of ss 260 and 261 of the *Property Law Act* 1974 from February/March 1993 to October 2001.