

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

HCVAP 2008/015

BETWEEN:

ROMIG WESTERBY MICHAEL

Appellant

and

HEATHER MICHAEL

Respondent

Before:

The Hon. Mr. Hugh A. Rawlins
The Hon. Mr. Davidson Baptiste
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Dane Hamilton, QC, with him Mr. D. Raimon Hamilton for the Appellant
Sir Clare Roberts, QC, with him Ms. C. Kamilah Roberts for the Respondent

2009: July 23;
2010: June 29.

Ancillary relief – 2 properties other than the matrimonial home purchased by the appellant and registered in his name only – whether trial judge erred in awarding the respondent a beneficial interest in 2 properties

The parties were married for 42 years before they divorced in 2007. Their 2 children are now adults. This appeal arises out of the ancillary relief proceedings with respect to their Antigua properties, which were acquired during the subsistence of the marriage. They acquired the matrimonial home in Antigua during the late 1960's. It stands on Parcel: 297 of Cassada Gardens and New Winthropes. They moved into it in 1968 and occupied it until 1980, when Mrs. Michael and the 2 children migrated to Florida. Mrs. Michael worked as a nurse there. Mr. Michael remained in Antigua, but contributed to the maintenance of the family in Florida and visited them on various occasions. In 1983, he rented out the matrimonial home and moved in with his sister. He paid her a monthly rent, which was about half the rent that he received for the matrimonial home. In 1982, the Michaels purchased a house in Florida. Both of them made substantial financial contributions towards that purchase. Mr. Michael paid the initial deposit. Mrs. Michael paid the monthly

installments. Mr. Michael continued to pay the mortgage on the matrimonial home, while Mrs. Michael paid that on the Florida home.

Mr. Michael resigned from his employment with Joseph Drew Limited in 1985 and received \$22,000.00 in thrift fund contributions. He placed this sum into a fixed deposit account in his and his wife's name in Florida. He was then employed as a manager with George Bennett Bryson & Sons Limited. In 1992, he purchased Parcel 298 at Cassada Gardens and New Winthropes, adjoining the matrimonial home and registered it solely in his name. In 1996, he purchased a plywood house and placed it on this parcel intending to use it as his investment for retirement. He also purchased Parcel 328 at McKinnons with a furnished house on it. He registered the property in his name and moved into it. Mrs. Michael also moved into it when she retired and returned from Florida in 2004.

The decision to award a 50% beneficial interest in the matrimonial home to Mrs. Michael was not appealed. Mr. Michael appealed the decision to award her a 30% beneficial interest in each of the properties on parcels 298 and 328. This decision was made on the ground that the parties organized their affairs in a manner that evinced a common intention, by way of inference, that these 2 properties were to be owned by them, jointly, and Mrs. Michael had detrimentally relied on that common intention.

Held: allowing the appeal with respect to parcel 298 but dismissing the appeal with respect to parcel 328, the parties to meet their own costs in the court below and in the appeal:

1. The learned trial judge correctly identified and stated the applicable legal principles as enunciated in *Abbott v Abbott* Privy Council Appeal No. 142 of 2005, *Pettitt v Pettitt* [1970] AC 777, *Gissing v Gissing* [1970] 2 All ER 780, and *Lloyds Bank PLC v Rosset* [1991] 1 AC 107.
2. The evidence provides sufficient grounds on which the judge could have found that there was a common intention that Mrs. Michael would have a beneficial interest in the property at parcel 328 and she had detrimentally relied on it.
3. While there was sufficient evidence to found a common intention that Mrs. Michael would have a beneficial interest in the property at parcel 298, there was no evidence that she had detrimentally relied on that common intention.

JUDGMENT

- [1] RAWLINS, C.J.: This appeal arises out of a matrimonial property dispute, which was heard in the ancillary relief stage of divorce proceedings. The proceedings in the High Court involved 3 properties. One was the matrimonial home on Parcel: 297, Registration section: Cassada Gardens and New Winthropes ("parcel 297"). The judge held that this property is held by the Michaels in equal shares, with Mr.

Michael holding Mrs. Michael's 50% interest or share on trust for her. This decision was not appealed.

- [2] The judge held, however, that Mrs. Michael is entitled to a 30% beneficial share in each of the other 2 properties, to wit, Parcel: 298, Registration section: Cassada Gardens and New Winthropes, ("parcel 298") and Parcel: 328, Registration section: McKinnons, ("parcel 328"). The judge also held that Mr. Michael holds those interests or share on trust for Mrs. Michael. These decisions were appealed, but not the 30% quantification of the interests awarded to Mrs. Michael. The judge ordered the valuation of these 2 properties, by an agreed valuator, and their sale, with an option for Mr. Michael to purchase Mrs. Michael's interest. Each party was ordered to bear his or her own costs.
- [3] In arriving at her decision, the learned trial judge relied on the principles enunciated in *Abbott v Abbott*,¹ *Pettitt v Pettitt*,² *Gissing v Gissing*,³ and *Lloyds Bank PLC v Rosset*.⁴ She found that in all of the circumstances, it was clear that the parties organized their affairs in a manner that evinced a common intention, by way of inference, that parcels 298 and 328 were to be beneficially owned by the Michaels, jointly. The judge further found that Mrs. Michael had detrimentally relied on that common intention because she provided furniture and household services, and assisted with the care and maintenance of the family in happier times.
- [4] Mr. Michael seeks an order setting aside the decisions with respect to parcels 298 and 328, as well as a declaration that he owns the 2 properties legally and beneficially. He also seeks costs in this court and in the court below. The appeal will be considered against a background.

¹ Privy Council Appeal No. 142 of 2005.

² [1970] AC 777.

³ [1970] 2 All ER 780.

⁴ [1991] 1 AC 107.

Background

- [5] The Michaels were married on the 13th August 1964. The marriage subsisted for some 42 years before they divorced in July 2007. The union produced 2 children who are now adults. During the marriage the parties acquired parcel 297. It was registered solely in Mr. Michael's name. A house was constructed on this parcel of land. It was completed in early 1967 and was rented for about one year. The parties moved into the house in 1968. Thenceforth, it became their matrimonial home until 1980, when Mrs. Michael and the 2 children migrated to Florida. Mrs. Michael worked as a nurse there. Mr. Michael remained in Antigua. The trial judge accepted⁵ that Mr. Michael assisted in maintaining Mrs. Michael and the children while they lived in Florida by providing US\$800.00 per month for rent and living expenses. He visited them in Florida on various occasions.
- [6] In December 1981, Mr. Michael saw a house for sale in Florida for US\$62,900.00. He decided to purchase. Upon his return to Antigua he borrowed US\$20,000.00 from Barclays Bank towards a deposit for the purchase. The parties agreed that the balance was to be paid by Mrs. Michael by monthly installments of US\$321.00, while Mr. Michael repaid the mortgage on the matrimonial home in Antigua.
- [7] Mr. Michael had moved out of the matrimonial home and rented it out. He lived with his sister and paid a monthly rental sum of EC\$500.00 to her. He rented out the matrimonial home until 1997 for EC\$800.00 per month. He then repaired it and thereafter rented it out again for EC\$1,000.00 per month.
- [8] Mr. Michael worked with Joseph Drew Limited until 1985. According to him, he resigned and received his thrift fund contributions of US\$22,000.00. He placed this money into a fixed deposit account in his and Mrs. Michael's name in Florida. Some 3 years later he learnt that Mrs. Michael had loaned the money to her brother who lived in Canada. He never received any part of the money. Mrs. Michael's evidence, on the other hand, is that she received US\$25,000.00 from

⁵ See paragraph 44 of the judgment.

Mr. Michael in or about February 1998. She did not lend the money to her brother. She did not use it for herself. Rather, it was used with Mr. Michael's knowledge to pay a bond for her son who was in prison in Florida. Mr. Michael willingly accepted that responsibility because she did not have the money to meet the bond at the time.⁶

- [9] On leaving Joseph Drew, Mr. Michael became a manager with George Bennett Bryson & Sons Limited in their supermarket and wholesale businesses. He earned EC\$8000.00 monthly and a yearly bonus of between EC\$30,000 - \$35,000.00. In July 1992, Mr. Michael purchased parcel 298, which adjoins the matrimonial home for EC\$11,000.00. Upon his retirement in 1996, he placed a plywood house on it, intending to use it as his investment for retirement. In 1992, Mr. Michael also purchased parcel 328 with a furnished house on it for EC\$327,500.00. Mr. Michael renovated it immediately upon purchase at a cost of EC\$93,000.00. Mr. Michael paid all legal and stamp duties. He registered parcels 298 and 328 solely in his name.
- [10] Mrs. Michael worked in Florida and cared for the children. During that time, she successfully applied for US citizenship for Mr. Michael. She also provided health insurance and other US benefits for him. She retired in 2004, returned to Antigua and lived with Mr. Michael in the house on parcel 328. Her evidence is that since her return they both occupied the house on parcel 328, which was partitioned with each of them living in separate portions by the time of the trial.
- [11] The present dispute relates mainly to the circumstances which surround the acquisition of the properties and the intention of the parties. The judge noted Mrs. Michael's admission that she made no direct financial contribution to the purchase or improvements to either parcels 298 or 328.⁷ No constructive, resulting or implied trust could therefore have arisen in her favour on the basis of contribution.

⁶ See paragraph 13 of Mrs. Michael's affidavit in reply dated 11th October 2006, which is at page 90 of the Record of Appeal, Volume 1.

⁷ See paragraph 12 of the judgment.

- [12] Mrs. Michael's case is that by virtue of his conduct, Mr. Michael encouraged an expectation in her that she would share equally in the beneficial interest of both of these properties. Her evidence is that Mr. Michael purchased both parcels after they had extensive discussions about their purchase. It was their common intention and she acted to her detriment in reliance on that intention by providing furniture for the house and contributing to the upkeep, because she was led to believe that she had a share in the property. She contributed by purchasing items of furniture that were placed in the houses on those parcels of land. She would not have done so had she not thought that this was the intention. Even if the properties were registered solely in Mr. Michael's name, they were acquired during the marriage when they arranged their family finances together.
- [13] Mr. Michael contended, on the other hand, that he purchased these 2 properties with his own individual funds which he earned from his employment. It was never his intention that Mrs. Michael, who made no contribution, directly or indirectly, would be entitled to have any interest in the properties. He informed her of the purchases of these parcels after the fact.

The appeal

- [14] This appeal seeks to impeach the judge's findings mainly on the application of the facts to the principles. The appeal questions whether the trial judge erred in inferring a common intention from the evidence, that Mrs. Michael is entitled to a beneficial interest in the disputed properties. The appeal also questions whether the judge correctly found that Mrs. Michael acted to her detriment on that common intention. Common intention and detriment are aspects of law in which findings of fact and law are quite intricately bound. It is difficult to separate them discretely. For the purposes of this appeal, however, I shall first consider whether the judge applied the correct principles from the authorities. I shall then determine whether she erred in her fact finding or application of the legal principles to the facts.

The legal principles

[15] Mr. Hamilton relied on this statement in *Gissing v Gissing*:⁸

“Where the wife has made no initial contribution to the cash deposit and legal charges and no direct contribution to the mortgage installments nor any adjustment to her contribution to other expenses of the household which it can be inferred was referable to the acquisition of the house, there is in the absence of evidence of an express agreement between the parties, no material to justify the court in inferring that it was the common intention of the parties that she should have any beneficial interest in a matrimonial home conveyed into the sole name of the husband, merely because she continued to contribute out of her own earnings or private income to other expenses of the household. For such conduct is no less consistent with a common intention to share the day-to-day expenses of the household, while each spouse retains a separate interest in capital assets acquired with their own moneys or obtained by inheritance or gift. There is nothing here to rebut the prima facie inference that the purchaser of land who pays the purchase price and takes a conveyance and grants a mortgage in his own name intends to acquire the sole beneficial interest as well as the legal estate;...”

[16] The learned judge also stated⁹ that she was mindful of the following statement from *Lloyds Bank PLC v Rosset*:¹⁰

“In resolving a dispute between two persons who had shared a home in circumstances where one party was entitled to the legal estate and the other party claimed to be entitled to the beneficial interest ... the fundamental question which had to be resolved was whether, on the basis of the evidence of express discussions between the partners and independently of any inference to be drawn from their conduct in the course of sharing the property and managing their joint affairs, there had been at any time prior to the acquisition of the property, or exceptionally at some later date, any agreement, arrangement or understanding reached between them that the property was to be shared beneficially coupled with detrimental action or alteration of position on the part of the person claiming the beneficial interest or, failing that, whether there had been direct contributions to the purchase price by the person claiming the beneficial interest from which a constructive trust can be inferred.”

[17] The judge noted, however, the recent development of principle in this area of the law by the House of Lords and Privy Council, respectively, in *Stack v Dowden*¹¹

⁸ At page 793g-j; See the judge's reference to this at paragraph 26 of the judgment.

⁹ At paragraph 47 of the judgment.

¹⁰ At pages 132E – 133A.

and **Abbott v Abbott**. In the latter case, the Privy Council stated that the constructive trust is the more appropriate tool of analysis in matrimonial cases.

- [18] The trial judge noted that in **Abbott v Abbott**, Baroness Hale adopted the approach of the House of Lords in **Stack v Dowden**, thereupon adopting with approval a passage from the Law Commission's discussion paper on Sharing Homes. The passage stated:

"If the question really is one of the parties' 'common intention' we believe that there is much to be said for adopting what has been called a 'holistic approach' to quantification, undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended."¹²

- [19] The trial judge applied the "holistic approach" on the guidance in **Abbott v Abbott** to determine the parties' common intention with respect to the beneficial ownership of the 2 properties, in light of their entire course of dealings and conduct. The judge adopted the following words of Baroness Hale:¹³

"The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in light of their whole course of conduct in relation to it."

- [20] In my view, this was the correct approach, particularly because **Abbott v Abbott** was a recent judgment given in a case that was on appeal to the Privy Council from Antigua and Barbuda. Baroness Hale had quite succinctly stated the basic applicable principle on determining common intention thus:¹⁴

"The parties' whole course of conduct in relation to the property must be taken into account in determining their shared intention as to its ownership."

- [21] At paragraph 49 of the judgment, the judge applied the principle from **Abbott v Abbott** in this way;

¹¹ [2007] UKHL 17.

¹² Paragraph 6.

¹³ At paragraph 6 of **Abbott v Abbott**, adopting her own summation of the principle she stated in **Stack v Dowden**, at paragraph 60.

¹⁴ At paragraph 19 of the judgment.

“There are two questions that should be addressed: first, was it intended that the parties share the beneficial interest in a property conveyed to one of them only; and secondly, if it was so intended, in what proportions was it intended that they share the beneficial interest.”

- [22] The judge correctly identified the 2 questions that arose in the present case. She determined the first question by reference to “common intention” and detrimental reliance principles. She determined the second question with respect to the share which was to be allotted to Mrs. Michael on a departure from “the equality is equity” principle recommended by Lord Nicholls in *White v White*,¹⁵ given that her contribution to the acquisition was indirect and insubstantial. The judge applied the correct principles. The question, then, is whether she erred in applying the facts.

Fact finding

- [23] In *Golfview Development Limited v St. Kitts Development Corporation and Another*,¹⁶ this court restated the settled principles that are applicable where an appellant seeks to impeach fact-finding by the trial judge. The basic principles are that an appellate court will not impeach the finding of facts by a first instance or trial court that saw and heard witnesses give evidence, except in certain very limited circumstances. An appellate court may, however, interfere in a case in which the reasons given by a trial judge are not satisfactory, or where it is clear from the evidence that the trial judge misdirected himself. Where a trial judge misdirects himself or herself and draws erroneous inferences from the facts, an appellate court is in as good a position as the trial judge to evaluate the evidence and determine what inference should be drawn from the proved facts. Where therefore there is an appeal against the finding of facts, the burden upon the appellant is a very heavy one. An appellate court will only interfere if it finds that the court of first instance was clearly and blatantly wrong, or, as it is sometimes more elegantly stated, exceeded the generous ambit within which reasonable disagreement is possible.

¹⁵ [2001] 1 AC 596.

¹⁶ Saint Christopher and Nevis Civil Appeal No. 17 of 2004 (20th June 2007), at paragraphs 23 and 24.

- [24] In the present case, the trial judge considered the 2 properties separately because she found that the relevant circumstances were somewhat different.¹⁷ She however made findings that were common to both. She found, for example, that Mrs. Michael's financial contribution to the acquisition of the properties was negligible in comparison to Mr. Michael's, and that, in any event, it was definitely not a direct contribution. She believed Mrs. Michael's evidence that the parties did everything as a family unit and shared expenses and operated as a team intending that they would each have a beneficial interest in the 2 properties. The judge believed, for example, that they held a joint fixed deposit account in Antigua from which monies were drawn by Mr. Michael for the family's financial affairs.
- [25] The judge further found that Mr. Michael used some of the proceeds from the rent of the matrimonial home to purchase the properties. The judge accepted Mrs. Michael's evidence that she was led by Mr. Michael's conduct to believe that the properties were purchased from these rents, together with other monies. She found that Mrs. Michael never asked for a share of that rental income because she understood that they were operating as a team to accumulate money and property for themselves as a unit, notwithstanding that her financial contribution to the acquisition and improvement of the properties was negligible.
- [26] With specific reference to parcel 328, the judge found that in recent times the Michael's treated the house on this land as their matrimonial home. The judge accorded much weight to this and found, further, that during the period from 2004 when Mrs. Michael occupied the house on this land with Mr. Michael, she cooked, cleaned and provided other household services. The judge further found that although Mrs. Michael made no direct financial contribution to the acquisition of parcel 328, she did, with Mr. Michael's approval, make a substantial contribution to the furnishings of the home situated on the said parcel. The evidence indicates that the parties treated the house situated on this land as their matrimonial home. In the circumstances, the judge opined that "it is clear that the parties organized their financial affairs in a manner which evinces a common intention, by way of

¹⁷ See at paragraph 58 lines 2 and 3 of the judgment.

inference, that parcel 328 was to be owned by both of them jointly". The judge continued;

"In addition, there is no doubt in my mind that based on Mr. Michael's conduct in relation to Parcel 328 a common intention can be inferred that the property was jointly owned and in furnishing the house, and, among other things, Mrs. Michael has altered her position to her detriment."¹⁸

[27] The judge found that at no time did the appellant treat the property situated on the said parcel as his exclusively. She opined:

"Further, I am of the view, that in all of the circumstances, when Mr. Michael went to Florida and assisted Mrs. Michael to relocate, to the property situated at Parcel 328, it was with the knowledge and common intention which had arisen previously that she was entitled to a beneficial interest in the property even though the legal interest inhered in him alone."¹⁹

[28] With specific reference to parcel 298, the judge found that Mr. Michael consulted Mrs. Michael about its purchase. She stated it thus:²⁰

"...I have no doubt that based on the totality of the circumstances that Mr. Michael discussed with Mrs. Michael the acquisition of Parcel 298. I am also of the view that...during those discussions they did, by way of inference, reach a common intention that the property was to be shared beneficially by Mrs. Michael."

The judge found that although there was no express agreement between the parties, there was an inference that it was their common intention that parcel 298 would be jointly owned by the appellant and respondent. The judge found that at the time of the purchase of the parcel of land and the house thereon the couple enjoyed a wonderful relationship and acted as a cohesive unit.

Submissions and decision

[29] Learned counsel for Mr. Michael submitted that the evidence which the learned judge used to formulate her findings was inconsistent. It appears to me that there was an inconsistency in the judge's finding on whether the parties had prior

¹⁸ Paragraph 61 of the judgment.

¹⁹ Paragraph 62 of the judgment.

²⁰ At paragraph 50 of the judgment.

discussions on the purchase of parcel 328. This was apparently an inadvertent inconsistency, but an inconsistency nevertheless.

[30] Learned counsel for Mr. Michael stated that having said that there was no evidence to support a finding of any prior discussion between the parties relating its acquisition,²¹ it was inconsistent for the judge to state, subsequently, that she did not believe Mr. Michael when he said that he did not inform Mrs. Michael prior to his purchase of the property.²²

[31] Learned counsel for Mr. Michael noted the finding by the judge that Mr. Michael used a substantial amount of his own funds to purchase the parcel. Counsel submitted that it was inconsistent for the judge to then conclude, as she did, that the rents from the matrimonial home and furnishings sold by Mr. Michael were used towards the purchase of the properties. I agree.

[32] Learned counsel for Mr. Michael further noted that the judge relied on evidence that the parties used funds from the sale of furnishings in the matrimonial home between 1980 and 1981 and the rental of the home which proceeds were placed in a joint account.²³ According to counsel, there was no evidence to support this finding or the finding that the parties agreed to use the funds from the joint account to acquire the 2 disputed properties because Mrs. Michael was led to believe that her name was on the deed. There was no evidence that provided any details of such a joint bank account in Antigua. I agree with the submission by learned counsel that Mrs. Michael's assertions about a joint account in Antigua were not credible and should have been accorded no weight by the learned judge.

[33] Counsel for Mr. Michael submitted that the trial judge erred in preferring the inconsistent, unsubstantiated assertions by Mrs. Michael instead of the consistent evidence by Mr. Michael. Counsel referred, for example, to Mrs. Michael's evidence, in her main affidavit, that she was led to believe that the funds from the

²¹ See generally paragraphs 58-62 of the judgment.

²² Paragraph 60 of the judgment.

²³ See paragraph 59 of the judgment.

joint account in Antigua were applied to the purchase of the properties whereas in her affidavit in reply she deposed that Mr. Michael informed her that he was going to use his bonus to purchase the properties and that she would not have to send any money. He noted that in her affidavit of 27th July 2006, Mrs. Michael deposed that she was led to believe that her name was on the title but subsequently testified that Mr. Michael told her that the transfer was put into his name only since she was not in Antigua to sign the documents.

- [34] Counsel insisted that the judge should have given some weight to Mr. Michael's evidence that Mrs. Michael was given all of the couple's savings to aid her migration to Florida; that he borrowed US\$20,000.00 to purchase the Florida home; that in order to lessen his financial burden he rented the matrimonial home and moved in with his sister and that he purchased the 2 disputed properties from his own funds including his severance pay of \$172,000.00.

Imputed common intention

- [35] Notwithstanding my agreement with learned counsel for Mr. Michael that there are aspects of the fact finding in the case that are precarious, it does not appear that this affected the most critical finding by the learned judge. The critical finding was that the parties did everything as a family unit and shared expenses and operated as a team intending that they would each have a beneficial interest in the disputed properties during the subsistence of the marriage. The decision that there was an imputed common intention that Mrs. Michael was entitled to the beneficial share in the 2 disputed properties was based on this finding.
- [36] The learned judge found correctly, in my view, because there was ample evidence from both parties to support this finding. This is exemplified, for example, in the dealings with the Florida property. Mr. Michael made the initial deposit, while Mrs. Michael continued to meet the mortgage payments. They both contributed to the maintenance of the children. Mrs. Michael was mainly responsible for their upbringing because they lived with her in Florida. Mr. Michael received the rents from the matrimonial home and met their expenses in Antigua. When the Florida

home was rented, Mrs. Michael received the rents. She has also seen to its upkeep, particularly after it was damaged by hurricane Katrina in 2005.

[37] Additionally, while Mrs. Michael worked in Florida, she carried the family, including Mr. Michael, on her health insurance. She paid for the insurance from her salary. Mr. Michael has benefitted from the plan for surgery, medication and hospital care on a number of occasions. He has received and continues to receive other benefits, including US citizenship, which Mrs. Michael procured for him during her working life there. Mr. Michael has for some time received a monthly pension from the US. This is the result of provision that Mrs. Michael made on his behalf when she worked there. The pension is now about US\$600.00 monthly and is guaranteed for life. It is subject to a 5% annual cost of living increase.

[38] It is noteworthy that counsel for Mr. Michael relied on Lord Diplock's statement in *Gissing v Gissing* which states;

"The court is not entitled to infer a common intention...from the mere fact that she provided chattels for joint use in the new matrimonial home,..."²⁴

It seems to me, however, that this statement does not impeach the finding that on the holistic approach of *Abbott v Abbott* the decision in the present case that the parties arrived at an imputed common intention that the 2 properties were to be shared beneficially by Mrs. Michael is correct. What then of detrimental reliance?

Detrimental reliance

[39] In relation to parcel 328, the learned judge found that Mrs. Michael acted to her detriment on the same evidence upon which the common intention was found. Additionally, however, the judge also found that Mrs. Michael's detrimental reliance also arose because she spent monies on furnishings for the house on that parcel and took care of her family in Florida while working and providing support to her husband, while he retained and used the monies obtained for the rent of the matrimonial home and monies from the parties joint account in Antigua. The judge

²⁴ At page 794f.

also relied on the fact that Mrs. Michael returned from Florida and lived with Mr. Michael in the house that is on this land for some time.

[40] I have already doubted the finding on the existence of a joint account in Antigua. It appears that the judge erred in using the same evidence on which the common intention was founded as evidence of detrimental reliance. The detrimental reliance should be founded with reference to things done in relation to the specific property. It seems to me that the judge was however quite correct to find that Mrs. Michael had detrimentally relied on the imputed common intention upon the evidence of her return to live on that property with Mr. Michael, resuming life with him in a matrimonial home, in a manner of speaking. The judge was entitled to believe her evidence, as she did, that Mr. Michael encouraged her to move into the home and to bring the furnishings that she provided for it. In my view, this was correctly taken as evidence of detrimental reliance, although it was not evidence from which to impute a common intention to have a beneficial interest as Lord Diplock admonished in *Gissing v Gissing*. In addition, Mrs. Michael cooked, cleaned, did the laundry and fulfilled other conjugal duties until Mr. Michael asked her to cease. In the premises, the judge correctly concluded, in my view, that Mrs. Michael is entitled to have a 30% beneficial interest in the property in parcel 328, which percentage has not been challenged in this appeal.

[41] In relation to parcel 298, however, the trial judge relied exclusively upon the same evidence upon which the common intention was found as the basis of Mrs. Michael's detriment reliance. There was no other evidence of detrimental reliance by Mrs. Michael in relation to that property. In my view, therefore, while the learned judge's finding that there was an imputed common intention that Mrs. Michael was entitled to a beneficial interest in the property, she erred in finding that she had detrimentally relied on that common intention.

[42] Inasmuch as Mr. Michael succeeds on one aspect of the appeal and fails on the other, the parties shall bear their own costs in these appeal proceedings. At this

juncture, I apologize to counsel for the delay in the delivery of this judgment, which is the result a consistently burdensome administrative workload over the past year.

[43] In the foregoing premises, I would allow Mr. Michael's appeal against the decision by the trial judge, in her judgment delivered on 18th June 2008, that Mrs. Michael is entitled to have a beneficial interest in Parcel 298 at Cassada Gardens and New Winthropes, and quash that aspect of the order. I would, however, dismiss Mr. Michael's appeal against the decision that Mrs. Michael is entitled to have a beneficial interest in Parcel 328 at McKinnons and confirm that aspect of the order. The parties shall bear their own costs.

Hugh A. Rawlins
Chief Justice

I concur.

Davidson Baptiste
Justice of Appeal

I concur.

Michael Gordon, Q.C.
Justice of Appeal [Ag.]