

**THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2023/0121

BETWEEN:

FRANKLYN GODWIN TYSON

Claimant

And

LESLIANNA ESTELLA WENDY TYSON

Defendant

Appearances:

Ms. Zenitaa Singh for the Claimant

Mr. Leon Charles and Mrs. Sherry-Ann Liburd-Charles for the Defendant

2025: October 8;
December 16.

JUDGMENT

- [1] **GILL, J:** Former spouses battle over property. The ex-husband claims sole ownership of, and the ex-wife claims a beneficial interest in, a house and land acquired before the marriage was dissolved. With no meeting of the minds, the parties move the court to resolve their issues.
- [2] Franklyn Tyson (“the claimant”) and Leslianna Tyson (“the defendant”) were married on 26th February 2005 and divorced some fifteen years later, effective 23rd August 2020. The marriage produced no children.
- [3] At the beginning of the marriage the claimant was self-employed as a taxi-operator/tour guide and the defendant was employed as a lab technician at the JNF

Hospital, Basseterre, St. Kitts. The parties rented a house until 2007. They agreed that the defendant would pay the rent and the claimant paid for food and utilities.

- [4] In 2007 they moved into the claimant's parents' house at Newtown, Basseterre, St. Kitts, rent free. The claimant paid bills and expenses there.
- [5] At that time, the defendant began studies to become a medical doctor and as agreed, the claimant became the sole provider for the parties. Being a medical student, the defendant became unemployed. The defendant is still a medical student, but also now employed as a phlebotomist.
- [6] The claimant was employed at the Four Seasons Resort, Nevis from 5th January 2015 to 16th July 2016. During that time, the claimant lived in Nevis and the defendant remained at his parents' house in St. Kitts.
- [7] In 2016, the property in dispute – land with a two-bedroom dwelling house thereon located at Lot #D5, Taylor's Housing Extension, Phase 4, Basseterre, St. Kitts ("the property") – was acquired from the National Housing Corporation ("NHC"). The application for the property was made in the claimant's name solely. The purchase price of the house was financed by a mortgage from NHC in the sum of Two Hundred and Nine Thousand, Seven Hundred and Eighty Eastern Caribbean Dollars (XCD\$209,780.00) in the sole name of the claimant as mortgagor. The claimant paid the monthly mortgage instalments.
- [8] The parties moved into the property in June 2016.
- [9] In September 2017, the claimant left the property and moved to Nevis where he resided with his now wife. The defendant remained on the property and resides there to date.
- [10] After the divorce, the claimant asked the defendant to vacate the property on several occasions, but she refused. By letter dated 10th September 2020, the claimant's attorneys wrote a letter to the defendant demanding that she vacate the premises by 31st October 2020.

[11] By letter dated 15th October 2020, the defendant's attorneys responded, stating that the defendant did not have the financial means to seek alternative living arrangements.

[12] On 28th June 2023, the claimant filed the fixed date claim herein, seeking the following:

- 1) A declaration that the claimant, Franklyn Godwin Tyson is the sole legal and beneficial owner of the property comprised of house and land situated at Lot #D5 Taylor's Housing Extension, Phase 4, Basseterre, in the island of St. Christopher in the Federation of St. Christopher and Nevis;
- 2) Possession of the property;
- 3) An order that the defendant do vacate the property within 30 days of any judgment given in favour of the claimant;
- 4) An order that the defendant do pay the costs of these proceedings; and
- 5) Any further and or other relief as the court deems just.

[13] In addition to her affidavit defending the claim, the defendant filed a counterclaim seeking the following:

- 1) A declaration that the counterclaimant is entitled to a fifty percent (50%) beneficial interest in the property;
- 2) An order that subject to the mortgage on the property, the defendant in the counterclaim be ordered to sign the necessary documentation to sign over and/or transfer his 50% beneficial interest in the property in the sole name of the counterclaimant;
- 3) An order that subject to the signing over of the property in the sole name of the counterclaimant, the counterclaimant shall assume full responsibility for the payment of the mortgage on the property;

- 4) An order that the counterclaimant be granted sole possession of the property;
- 5) Alternatively, an order that the property be valued by an independent valuator and the counterclaimant be given the first option to buy out the defendant in the counterclaim's beneficial interest in the property within 90 days so that sole equitable interest in the property be thereafter transferred to the counterclaimant;
- 6) Costs;
- 7) Such further or other relief as the court thinks just.

[14] The defendant's claim for a declaration of a 50% beneficial interest is based on the doctrine of constructive trust.

[15] The claimant's case is that at the time the property was acquired, the marriage had already broken down, and it was always understood between the parties that the property belonged to him. He avers that at no point in the cohabiting of the property was it the intention that the property was to be for the benefit of both parties.

[16] The defendant's position is that at all material times, there was an agreement and common intention that the property would be owned jointly between them and that the house would be their matrimonial home.

Issues

- [17] The court must determine:
- 1) whether the defendant is entitled to a share in the beneficial interest in the property purchased in the sole name of the claimant;
 - 2) If so, in what proportion?

The Law

- [18] Where property is registered in one party's name, the legal and beneficial title presumptively coincide. The burden lies on the party asserting otherwise to prove that the beneficial ownership is different from the legal ownership.

- [19] In the seminal case of **Stack v Dowden**,¹ Baroness Hale explained:
- “... the starting point where there is sole legal ownership, is sole beneficial ownership... the onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So, in sole ownership cases, it is upon the non-owner to show that he has an interest at all.”
- [20] The principle has been consistently applied in the Eastern Caribbean Supreme Court. In **Teckla Edwards v Dr. Alvin G. Edwards**,² which dealt with the determination of beneficial interests in a property held in the sole name of one spouse, Thom JA, applying **Oxley v Hiscock**³ and **Jones v Kernott**⁴ stated:
- “...where property is registered in the sole name of one party, there is no presumption of joint beneficial ownership. In determining what share each party is entitled to, the court must consider the whole course of dealing between them in relation to the property and determine what is fair. In doing so it must be noted that financial contribution is only one of the relevant factors.”
- [21] In **Abbott v Abbott**,⁵ the Privy Council laid down the principle that in determining the existence of a constructive trust between parties where the legal title is held in one party's name and the other is claiming a beneficial interest, the court must look at the whole course of dealing of the parties in relation to the property. The search is to ascertain the parties' shared intentions, actual, inferred, or imputed, with respect to the property in light of the whole course of conduct in relation to it.
- [22] The parties' shared intention can be inferred from the whole course of conduct in the absence of an open and actual agreement. The first question is, therefore, whether there was an agreement, arrangement or understanding reached between them that the property is to be shared beneficially.⁶

¹ [2007] 2 AC 432 at para. 56

² ANUHCVP2012/0040 at para. 45

³ [2005] Fam 221

⁴ [2011] UKSC 53

⁵ (Antigua and Barbuda) [2007] UKPC 53 (26 July 2007)

⁶ Lloyd's Bank Plc v Rosset 1991 1 AC 107

[23] In the recent decision in **Robert Owen Haynes v Patricia Eudora Welsh**,⁷ coming out of St. Kitts, the Court of Appeal held that common intention is to be deduced objectively from the parties' conduct.

[24] At paragraph 33 of the judgment, Ventose JA quoted paragraph 69 of Baroness Hales' judgment in **Stack v Dowden** wherein she identified a non-exhaustive list of considerations in the determination of the parties' common intention. It reads:

"In law, "context is everything" and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection..."

[25] On the matter of improvement to the property by the spouse not being the holder of the title, Lord Reid in **Pettitt v Pettitt**⁸ stated:

"In whatever way the general question as to improvements is decided I think that the claim in the present case must fail for two reasons. These improvements are nearly all of an ephemeral character. Redecoration will only last for a few years and it would be unreasonable that a spouse should obtain a permanent interest in the house in return for making improvements

⁷ SKBHCVP2018/0008, delivered March 13, 2025

⁸ [1970] AC 777 at 797

of this character. And secondly I agree with the view of Lord Denning M.R. expressed in *Button v. Button* [1968] 1 W.L.R. 457, 461. He said with regard to the husband 'he should not be entitled to a share in the house simply by doing the 'do-it-yourself' jobs which husbands often do': and with regard to the wife (at p. 462):

"The wife does not get a share in the house simply because she cleans the walls or works in the garden or helps her husband with the painting and decorating. Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interests in, the property."

...But if a spouse provides, with the assent of the spouse who owns the house, improvements of capital or non-recurring nature, I do not think it is necessary to prove an agreement before that spouse can acquire any right."

Whether the defendant is entitled to a beneficial interest in the property

[26] In order for the defendant to succeed in her defence and counterclaim, the onus is on her to prove that the parties had a common intention (actual, inferred or imputed) to share the beneficial interest in the property. In relation to the existence of a common intention, the court is tasked to consider the contradictory evidence of the parties.

[27] In support of their opposing positions, each party relies on his/her version of the following:

- i. The process for the application for the property;
- ii. Direct financial contributions;
- iii. The defendant's indirect financial contributions;
- iv. The defendant's non-financial contributions.

The application process

[28] The defendant contends that the process for the application to the NHC for the property supports a finding of common intention that the property was to be shared beneficially between the parties.

[29] The parties agree that the process of acquiring the house included visits to Mr. Ian Liburd ("Mr. Liburd"), former parliamentary representative, and to NHC. They are divided on the number of visits and the presence of the defendant on these visits.

- [30] The defendant's evidence is that she was directly involved in the initiation of the process for the acquisition of the property. She contends that she was present at the meeting with Mr. Liburd when the request was made to him for the property, when the application was made and the interview conducted at NHC, and when the keys for the property were collected.
- [31] Under cross-examination, the defendant confirmed that she was advised by the claimant's mother, Cloesta Tyson, to make an appointment to see Mr. Liburd to discuss obtaining a house. Under cross-examination, Cloesta Tyson corroborated this evidence. The defendant's evidence is that she discussed this with the claimant and the parties went to see Mr. Liburd to discuss purchasing a house. The next day they attended an interview at NHC where they both initially signed an application and a disclosure form. The defendant states that the claimant raised the fact that she had land already and that based on this, she was informed that the house had to be placed in the claimant's name only. The defendant states that as a result, the application form that was completed in their joint names was destroyed and a second application form was filled in the claimant's name only, on the premise that the defendant's name would be added to the property at a later date. The parties then returned to NHC a second time to collect the keys to the house.
- [32] The claimant disputes the defendant's assertion that she was part of the application process. The claimant admits that the defendant visited Mr. Liburd's office once with him, at a follow-up meeting, and NHC, once with him, for the collection of the keys, but these were accompanying visits and the claimant asserts that the defendant was not involved in the actual application process.
- [33] It is the claimant's evidence that he visited Mr. Liburd twice in relation to the property - the first time to enquire about getting a property, and the second time to follow up on the request. He stated further that he visited NHC three times in relation to property - the first time to complete the application, the second time for the interview, and the third time for the signing of the final documents and the collection of the keys. In total, between Mr. Liburd and NHC, the claimant states he made five visits,

two visits to Mr. Liburd and three visits to NHC. He denied that the defendant accompanied him to the interview with Camilia Williams at NHC on 14th June 2016 when the application form was completed and signed. He stated that he also signed a disclosure form on that date. When shown the disclosure form which contained the defendant's signature below his, the claimant stated under cross-examination that he did not know how the defendant's signature got on the disclosure form.

[34] Mr. Liburd, called as a witness by the defendant, was of little or no assistance in resolving the dispute. He had no recollection of any meeting with the parties regarding the property. He admitted that he knew the claimant well but did not know the defendant.

[35] Further, the court received no corroborative assistance as to the attendance of the parties at NHC or the conversations that took place there, as no witness from NHC was called to support either party's version of the NHC meetings.

Handing over of the keys

[36] The claimant states that he visited NHC on 28th June 2016 to collect the keys to the property and that the keys were handed to the defendant. Under cross-examination, the claimant stated that the keys were given to the defendant "out of courtesy" and were left with the defendant for three days while he returned to Nevis to work. Learned counsel for the claimant, Ms. Singh, submits that the reason given by the claimant as to why the keys were handed to the defendant is plausible. The parties were husband and wife at the time, and it was reasonable for a third party to infer that the property was for their joint benefit on that mere fact. However, Ms. Singh argues that does not mean it was a true reflection of the actual intention of the parties. Counsel submits that the mere fact that a third party assumably made this supposed inference as submitted by the defendant, is not evidence of a common intention between the parties considering all circumstances, and does not displace the starting point presumption of full beneficial interest being held by the claimant. The act of physically handing over keys does not transfer beneficial ownership in the absence of any accompanying agreement or document.

- [37] The defendant's evidence is that both parties attended the office of NHC to collect the keys and that while at NHC, the NHC employee placed the two keys in her hands in the presence of the claimant. The defendant states that after the keys were given to her, they both went to the house and subsequently moved in.
- [38] Learned counsel for the defendant, Mr. Charles, submits that the placing of the keys into the hands of the defendant gives the court a clear indication of how third parties looking on viewed what was happening. Keys are normally given to owners and notwithstanding the application form in the claimant's sole name, the entire process was done together and it culminated in the keys being given to the other owner. The claimant did not protest or object to the defendant receiving the keys and the defendant thereafter accessed and moved into the property. Learned counsel asks the court to reject the claimant's argument as to the purpose and meaning of the keys to the property being handed to the defendant. Counsel posits that if the claimant's intention from the outset was that the property was not intended to be for the benefit of both parties, it does not make sense that the claimant would allow the defendant to attend the meeting to collect the keys. The defendant submits that both parties attending the office to collect the keys for the property is further evidence of the parties' common intention to share the property.

Direct financial contributions

- [39] Before trial, it appeared that it was not disputed that the claimant alone financed the purchase of the property. The evidence-in-chief of the parties showed that he alone paid and continues to make the mortgage payments. The claimant acknowledges that financial contribution by the parties is not the only consideration in determining the existence of a common intention.
- [40] In cross-examination of the claimant by learned counsel for the defendant, the claimant admitted that the mortgage payments were made from the parties' joint account at National Bank. Counsel refers to this as an indication that payments were being made on behalf of and for the benefit of both parties, and submits that this is evidence that the defendant made direct financial contributions to the property.

- [41] Learned counsel for the claimant, Ms. Singh (in reply to the defendant's submissions), points out that the issue of the mortgage being paid from a joint account for the benefit of both parties was not a pleaded fact of the defendant. The defendant, throughout her pleadings and evidence-in-chief acknowledged that the claimant solely paid the mortgage with no mention of it being from a joint account. Her only contention in reference to the mortgage instalments was that her father offered to pay half of the mortgage instalments and the claimant declined the offer. The issue of the joint account, being a material fact, the claimant questions why it was presented before the court for the first time at the trial. The claimant submits that the clear answer is that it is a concoction and a last-ditch effort by the defendant to establish her claim, though in clear contradiction of her previous case. Ms. Singh argues that if it were that the payments were made from a joint account that was used for the benefit of the parties, the defendant would have established that in her pleadings and evidence-in-chief.
- [42] Instead, the matter of the joint account is raised for the first time in cross-examination of the claimant. Learned counsel alleges that the claimant was not cross-examined on the use and management of this account or the contributions to this account. She argues that the mere fact that the claimant said the account was joint lends nothing more than an on-the-face inference that it was jointly used. However, Counsel contends, if it were to be looked at deeper, it may be established that it was not for joint use. For instance, Counsel explains, there is no evidence presented by the defendant that she accessed this account and used the money therein for the payment of bills of the home or otherwise. Therefore, Ms. Singh submits that the bare assertion that it is a joint account does not mean that the payments issued from the account were for the joint benefit of the parties, and urges the court to give no weight to this evidence.
- [43] It is for the defendant to prove that she has a beneficial interest in the property, and the claimant submits that the evidence presented regarding the joint account falls short in that establishment.

Indirect financial contributions and non-financial contributions

- [44] The defendant gave evidence of her contribution in purchasing décor for the house and getting the driveway and walkway paved. She stated that from June 2016 after moving into the property, she assumed responsibility for some of the expenses and utilities of the property and offered to pay her half of the mortgage (relying on her parents' assistance to meet these obligations), which the claimant refused. The defendant also gave evidence of the claimant's late payment of utility bills due to finances. During her examination-in-chief, she stated that of all the items in a list exhibited by the claimant, only a rug was bought for the property in addition to a decorative captain's wheel. The defendant asserts that she paid for installing chandeliers, painting bannisters and painting burglar bars on the property, and it is also her evidence that as a gift to her, her mother-in-law Cloesta Tyson assisted with the fencing of the property. Cloesta Tyson and the claimant shared that expense.
- [45] The claimant alleges that other than the defendant's bare assertions, there is no corroborating evidence of these contributions. Although the defendant contends that she made payments of bills and utilities through the help of her parents, she neither presented receipts, bank statements, utility statements nor called her parents or witnesses to corroborate her evidence. Therefore, learned counsel for the claimant submits that this evidence is unreliable and inferior to the clear and corroborated evidence of the claimant.
- [46] Under cross-examination the claimant admitted that the furniture was partially selected by both parties and that the defendant was partially involved in décor, design and all the intricacies, and ultimately admitted that both parties played their part in making the property a home. The claimant does not dispute that the defendant rendered her opinion on décor of the home. However, he submits that this is not unnatural as she was living in the home, and it would be for her benefit and comfort. The defendant does not dispute that the claimant paid for the furnishing of the home. She asserted that she chose certain items. The claimant submits that the parties' actions, when put into perspective of the state of their relationship at that point, being on the decline, as well as the short time thereafter before the claimant

left the house, shows clearly that any involvement by the defendant in making the property a home was for her benefit, not as a common intention regarding the ownership of the property.

[47] The claimant argues that the defendant's reliance on purchases of curtains, paint, and chandeliers cannot assist her. These are domestic consumables or ephemeral enhancements. As held in **Pettitt v Pettitt**, these improvements, of a temporary or decorative character, do not confer any beneficial interest. Only capital improvements made with the owner's assent and of enduring value could even be considered, and in this instance, none was shown.

[48] Moreover, the claimant asserts that he gave clear unwavering evidence that he neither authorized nor was aware of any such works. Accordingly, the claimant submits that even on the defendant's case, there was no joint enterprise or assent to expenditure as relied on by the defendant.

[49] The fence was erected jointly by the claimant and his mother. Cloesta Tyson testified that her contribution was motivated by concern for the defendant's safety whilst staying on the property, not as recognition of co-ownership. Cloesta Tyson gave evidence that she understood the owner of the property to mean the person to whom the property was given. The claimant submits that a familial act of kindness does not translate into proprietary entitlement.

Defendant's allotment of other land

[50] The defendant's evidence in her witness statement is that at the meeting at NHC, the claimant told the NHC employee that she (the defendant) had land (from NHC). The claimant admitted that he did so "to avoid confusion". The defendant stated that the NHC employee said that if the defendant had land, it was best for the claimant to fill out the application form by himself. This is the defendant's explanation as to why the property is in the claimant's name solely, and not in their joint names. The defendant further stated that the NHC employee told her not to worry about it, and that when the matter went to the claimant's lawyer, he would put her name "on the house" then. The defendant stated that she looked at the claimant and asked him,

“Are you sure you are going to do what this lady said?” According to the defendant, the claimant replied, “Do not worry, let’s just what she said.” The claimant’s version of this is that the defendant asked for her name to be added, and he said, “No.”

[51] The defendant submits that the provision of the information of the defendant’s land was done to provide a basis for the application for the property to be completed in his name only. The defendant argues that the fact that the claimant had to find an excuse for the form to be completed in his name only, provides a strong indicator that there was a common intention for the property to be shared.

[52] The claimant contends that this submission by the defendant is itself supportive of the claimant’s claim that there was no common intention from the very beginning. The claimant reasons that a person intending a shared interest would not proactively prevent the defendant’s name from being included.

The purpose for which the property was acquired

[53] The claimant’s evidence is that the marriage between the parties had already broken down when he acquired the property in 2016. He states that the relationship began to deteriorate in 2013 and had broken down in 2014. He stated that he informed the defendant of his desire to file for divorce but would only do so after the defendant completed her studies so that they were both able to stand on their own.

[54] The parties lived with his parents at their house for over eight years from 2007 to 2016. The claimant averred that, among other things, he was being pressured by his mother to get a place and move out because the defendant and his mother did not have a good relationship. The defendant denied that there were any issues between her and the claimant’s mother Cloesta Tyson. However, Cloesta Tyson’s evidence is, *“After Frankie and Leslianna were living with me for a number of years, Leslianna and I were butting heads in my home. I told Frankie that he would have to get somewhere for his wife to live.”*

[55] The claimant insists that the property was not acquired to be the parties’ matrimonial home, but was acquired for his benefit only. He intended to use the property for both

his home and business. He is adamant that there was no agreement and/or understanding between the parties that the defendant would share in the ownership of and/or interest in the property.

- [56] The defendant stated that after the parties moved into the property she asked the claimant if he put her name on the paper for the house, and he replied, "Stop worrying, this is a matrimonial home." This is denied by the claimant. While not denying that there was a deterioration or breakdown of the marriage before the acquisition of the property, the defendant testified that before the parties moved into the property, there was no discussion about divorce and she saw the move to the property as a sign that they were working on their issues.

Common intention

- [57] This is a case of sole ownership, the claimant being the only registered owner of the property. There is no presumption of joint beneficial ownership so that the onus is on the non-owner, the defendant and counterclaimant, to show that she has an interest in the property. The defendant alleges that in a conversation at the NHC office when the application for the property was made, the claimant assured her that her name would be added to the title. She further alleges that after the parties moved into the property, she asked him about adding her name and he told her not to worry, that the property was the matrimonial home. These allegations are strenuously denied by the claimant. In the circumstances, I cannot conclude that there was any express agreement between the parties to share the beneficial interest in the property. Therefore, in coming to a conclusion as to whether there was a common intention to share the beneficial interest in the property, the court must consider the whole course of conduct of the parties, bearing in mind that each case turns on its own facts.
- [58] The parties were married in February 2005. At that time, they agreed for the defendant to pay the rent and the claimant to pay for food and utilities at a residence at Cayon, St. Mary, St Kitts. This arrangement was in place for approximately two

years until 2007 when the defendant started her medical studies at St. Theresa's University. At that time, the claimant became the sole provider for the couple.

[59] From 2007, owing to financial constraints, the parties lived with the claimant's parents for over eight years, rent free. In these circumstances, given the tension no doubt generated by that situation alone, it is understandable that it was desirable for the parties to acquire a residence of their own.

[60] There is no dispute that the claimant financed the purchase of the property, and made the far greater contribution to its upkeep. At the forefront of the court's mind is that financial contribution is only one of the relevant factors to be taken into consideration in the course of dealing between the parties. Notwithstanding the concession by the defendant of the claimant's monetary majority contribution, learned counsel for the defendant submits that the evidence of the claimant at trial that the mortgage payments came out of a joint account held by the parties, is evidence that the defendant made direct financial contributions to the property. This is, in effect, a submission that the parties made equal payments towards the mortgage. I find favour with the claimant's submissions on this point. The issue of payments from the joint account, raised for the first time in cross-examination of the claimant, is in direct contradiction to the defendant's pleadings and witness statement that the claimant solely paid the mortgage. In my view, this attempt by the defendant to show that she has a beneficial interest in the property fails.

The Relationship Between the Parties at the Time the Property was Acquired

[61] The claimant's contention that the marriage between the parties had broken down when the property was acquired is borne out in the evidence on both sides. The parties moved into the property in June 2016 after the claimant's application was approved. The claimant's evidence is that the marriage had broken down since 2014. The defendant testified that since 2014, the parties were having issues. She stated that in 2015/2016, he was staying in Nevis and he would come over (to St. Kitts) on weekends. When he moved back to St. Kitts, he spent the weekends in Nevis. Up until June 2016, the parties resided at the claimant's parents' home and

his mother's evidence is that after a time, the claimant started spending a lot of time in Nevis and when he was in St. Kitts, he occupied a separate bedroom. The defendant further stated that in September 2017, the claimant relocated to Nevis, and "abandoned the marriage and our home". She was aware that he moved in with his then girlfriend, now wife, in Nevis. The move occurred just over one year after the property was acquired. Critically, although stating that when the claimant came back to St. Kitts, they were still having sex, the defendant admitted that the marriage between the parties had deteriorated at some level when the property was acquired.

[62] The defendant remained in the property after the claimant relocated to Nevis. The claimant avers that he allowed her to remain on the property and waited for some time to file for divorce so that she could finish her studies and get on her feet. The defendant started her medical studies in 2007. To date, she has not completed her medical degree. Her evidence is that she was set to graduate in December 2024. Astonishingly, in answer to the court, the defendant stated that she was now set to graduate in 2027. At this point of the defendant's evidence, the court observed significant exasperation from the demeanour of the claimant who was sitting in court after having given his evidence. The claimant was of the view, justifiably so to my mind, that the defendant was taking too long to complete her studies and he eventually filed for divorce in 2018. In explaining why he did not take any formal action to have the defendant move out of the property before he filed the claim in 2021, the claimant described himself as a very reasonable man.

[63] The claimant gave evidence of the defendant's apparent concern about moving into the property. He stated that she told him she did not want to move in "to got to move out". At trial, the defendant admitted saying those words. She explained that what she meant was that she did not want to move into the house to then have to move again. To my mind, this testimony of the defendant shows that she was cognizant of the fact that the marriage had broken down and she anticipated that at some point, she would have to move out of the property.

[64] Given the evidence of the deterioration of the marriage between the parties at the time of the acquisition of the property, the claimant having engaged in a new domestic relationship with a woman to whom he is now married, it is reasonable to conclude that there was no intention, particularly on the part of the claimant to embark on a new venture in acquiring property for the benefit of both parties. The situation dictates against a common intention in the parties to share ownership in the property. In the circumstances of this case, for this reason alone, that is, the breakdown of the marriage at the time the property was acquired, the claimant's version of the conduct of the parties in the whole course of dealing between them is to be preferred. Having said that, I have considered the whole of the evidence in what amounts to, in the main, a "he said, she said" case.

The Application Process

[65] The defendant's own evidence is that the claimant raised the issue with the NHC employee of land the defendant had. The claimant testified that he said this to avoid confusion. A reasonable inference to be drawn is that the claimant intended for his name only to be included in the application. In fact, learned counsel for the defendant submits that the provision of this information by the claimant was done to provide a basis for the application to be completed in his name only. Therefore, in contrast to learned counsel's submission, this is a strong indicator that there was no common intention for the property to be shared.

[66] The claimant's version of the events is that the defendant asked for her name to be included and he said no. It appears that the defendant concedes that she asked for her name to be included because under cross-examination, she testified that it was not true that upon her request to put in her name, the claimant disagreed. However, she told the court that she was not going that far as to say he agreed.

[67] The defendant's presence, at meetings with the parliamentary representative at the material time, Mr. Liburd, and at the NHC office, raises the question as to why the defendant accompanied the claimant to these meetings in relation to the acquisition of the property, if the parties did not intend to share the interest therein as the

claimant contends. I accept the defendant's evidence that the claimant's mother advised her to make an appointment with Mr. Liburd to discuss purchasing a house. This was corroborated by Cloesta Tyson. I accept also the defendant's evidence that she discussed this with the claimant and they went to see Mr. Liburd.

[68] Learned counsel for the parties engaged in a debate as to the evidence on the number of visits the parties made to Mr. Liburd and the NHC office. The claimant explained the defendant's presence with him at a meeting with Mr. Liburd, according to him his second visit as he went to Mr. Liburd alone prior to the visit with the defendant. His evidence is that "she asked to come along". Regardless of the number of visits, the evidence reveals that the defendant accompanied the claimant to the meetings and she had some involvement in the process of acquiring the property.

[69] In my view, in the circumstances of this case, the presence of the defendant at the meetings does not ground common intention in the parties. The claimant intended for the defendant to reside in the premises temporarily, that is, until she got on her feet. Notwithstanding their issues, the parties were still husband and wife so the claimant allowed the defendant, who was to reside there, albeit temporarily, to participate in the acquisition process for the property.

[70] The evidence in relation to the disclosure form calls for some examination. Both parties' names and signatures appear on the Disclosure Agreement form of the NHC. By this Agreement, the parties authorised the NHC to obtain from relevant persons, firms and/or companies, any information the NHC may require relative to the application for the property. The form is dated 14.06.16 (14th June 2016). The form indicates, and on its face, is proof, that both parties signed and dated the Agreement on that date. The claimant stated that he attended the interview for the property at NHC alone on 14th June 2016 when he signed the disclosure form. He denied that the defendant was present with him at NHC on that day, stating that she was present at a later date when the keys to the property were handed over.

[71] The claimant has not presented any cogent explanation to allow the court to find that the parties did not sign the Agreement form together. There is no allegation of fraud or impropriety on the part of NHC or the defendant. Therefore, on the basis of the information on the NHC disclosure form, I am constrained to find that the parties were both present when they signed and dated the form on 14th June 2016. The defendant's witness statement suggests that the application form was filled out and the keys were handed over on the same day. However, under cross-examination, which occurred after the claimant had given evidence of his visits, she stated that she visited the NHC twice.

[72] To my mind, the apparent confusion in relation to the disclosure form does not assist the defendant in proving a common intention. The fact remains that at the claimant's instigation, his name only appeared on the actual application form. If the NHC employee advised that the application be made in the claimant's name only and according to the defendant, the original application with both parties' names was destroyed, it is unclear as to why the defendant's signature appeared on the disclosure form. What is clear is that on each party's version of the events surrounding the application, the claimant intended for his name only to be included in the application for the property. Whereas by her attendance at the meetings with Mr. Liburd and at NHC, the defendant intended that she be part of the whole acquisition process with a view to being an equal beneficiary, that intention was hers alone. In **Cupid v Thomas**,⁹ the court ruled:

"I am unable to impute a common intention on the part of the parties that the plaintiff was to have a beneficial interest in the property. Indeed, at most there may have been unilateral intention of the plaintiff, although it seemed to me to be more than a *quasi*-moral view of the plaintiff that, since she shared part of her life with the defendant, now that the parting had come and they were to go their separate ways, she should be compensated by being given, what she called, 'part of what we worked for'. She has not, in my view, proved by cogent evidence, that there was an implied common intention that she should have an interest in the house."

⁹ (1985) 36 WIR 182 at p. 197

[73] In the circumstances of this case, I rule that the presence of the defendant at the meetings with Mr. Liburd and at the NHC office does not establish a common intention in the parties to share the beneficial interest in the property.

Third Parties' Perceptions

[74] The defendant places great reliance on the fact that the NHC employee handed the keys to the property to her when the parties attended at the NHC office to collect them. She submits that this is a clear indication of how third parties looking on viewed what was happening, and that both parties attending the office to collect the keys is evidence of the parties' common intention to share the property. Despite the claimant's stated intention for the defendant to live at the property while she was studying and until she could stand on her own, the fact is they were still husband and wife at the time of the application for, and acquisition of, the property. It was quite reasonable for the NHC employee to assume that they intended to share it. However, this does not ground the common intention of the parties themselves.

[75] Likewise, I disagree with the submission of the defendant that the evidence of the claimant's mother, Cloesta Tyson, underscores the common intention of the parties. Cloesta Tyson's evidence-in-chief was that she saw the parties' departure from her home as husband and wife moving in their own home together, and that the claimant was excited for the move. At trial, she stated that she thought they were close when they moved into the property. Her evidence also revealed that when the claimant came in from Nevis, he slept in a separate bedroom. Even if the claimant's mother observed a harmonious relationship between the parties, this is insufficient to establish a common intention to share the beneficial interest in the property. In the circumstances of the parties residing with her and her husband at their home for upwards of eight years, in an atmosphere of a less than perfect relationship with the defendant, it would be reasonable for Cloesta Tyson to be more than encouraging, even lovingly, to see the backs of the couple from her premises, and move to their own home.

[76] The claimant and Cloesta Tyson paid for the fencing of the house. One reason advanced by Cloesta for her contribution to the fence was as a gift to the defendant as she wanted her to be safe in her yard.

[77] In my respectful view, the perception of third parties of the relationship between the parties is of no moment to the determination of the common intention of the parties in this case. It would be improper for the court to establish such common intention from a reasonable inference drawn from another's perception of a domestic relationship.

Direct Financial Contributions

[78] Before trial, the defendant never mentioned the payment of the mortgage from a joint account of the parties. The defendant's pleadings and evidence-in-chief acknowledged that the claimant solely paid the mortgage for the property. The existence of a joint account was raised for the first time in cross-examination of the claimant, and the defendant submits that mortgage payments from the parties' joint account is evidence of direct financial contribution by the defendant. Payment from a joint account to establish a common intention in the parties is a material fact that ought to have been pleaded and established in the evidence before trial. I agree with the submissions of learned counsel for the claimant on this issue. The evidence elicited at trial, and submissions of the defendant on the joint account, fail to convince the court that the defendant made direct financial contributions to the mortgage payments, in light of her pleadings and evidence that the claimant paid the mortgage solely.

[79] Further, a reasonable inference to be drawn that the claimant's intention that the property was for his benefit only, was the defendant's evidence that her father offered to pay her half of the mortgage payments and the claimant refused.

Indirect Financial Contributions - Décor and Improvements

[80] On the authorities, the defendant's testimony of choosing the décor, selecting furniture, purchasing curtains, installing chandeliers, painting bannisters and burglar

bars and the like, does not confer beneficial interest. As regards improvement to the property, I am guided by the view of Lord Denning M.R. quoted by Lord Reid in **Pettitt v Pettitt**¹⁰ that “The wife does not get a share in the house simply because she cleans the walls or works in the garden or helps her husband with the painting and decorating. Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interests in, the property”.

[81] In **Joy Ann Lewis v Calvin Lewis**,¹¹ Ellis J (as she then was) quoted from Fox LJ in **Burns v Burns** as follows:

“... the fact that the parties lived together and do the ordinary domestic tasks, is, in my view no indication at all that they thereby intended to alter the existing property rights of either of them... The undertaking of such work, is, I think...the sort of things which are done for the benefit of the family without altering the title to the property.”

[82] I agree with the submission of learned counsel for the claimant that the claimant’s concession that the defendant contributed to making the house a home does not establish a common intention to share interest in the property. The mere fact that the defendant gave her opinion on décor, cleaned, cooked and washed along with the claimant is not sufficient to alter the position that the sole beneficial interest lies with the claimant. These are what spouses would normally do.

[83] The evidence reveals that the claimant paid utility bills for the property even after he filed for divorce in 2018. He paid up to 2020 at which time the defendant took over those payments. These and other expenses undertaken by the defendant in relation to the home were clearly for her benefit only, as she lived there after the claimant moved to Nevis in September 2017. Even before the claimant relocated, the evidence shows that he was mostly in Nevis after the parties moved into the property so that any involvement of the defendant in making the house a home was for her benefit in occupation of the house.

¹⁰ [1970] AC 777

¹¹ BVIHCV2015/0259, delivered April 3, 2019 at para. 72

Paving of the Driveway and Walkway of the Property

[84] Learned counsel for the defendant includes as non-financial contributions of the defendant, “getting the driveway and walkway paved”. The claimant denies this contribution of the defendant. There is no evidence as to what this entailed. The defendant stated that she had the parties’ initials (FT and LT) carved into the pavement, but admitted to the court that the claimant did not like that. There is no evidence of the claimant’s assent to this work the defendant claims she got done.

Detrimental Reliance

[85] Even if the court were to find that there was a common intention, the defendant must show that she acted to her detriment based on that common intention. In order to succeed in establishing that she acted to her detriment, the defendant must show that she did something which she could not reasonably expected to have done unless she was to have an interest in the property.¹² In all cases, there must be a sufficient link between the common intention and the conduct which is relied upon to show that the defendant has acted upon this common intention to her detriment.

[86] Learned counsel for the defendant submits that the defendant was always of the view that the property was for the benefit of both parties in this matter and to that end, she did the following:

- a. agreed to the purchase of furniture using the funds in the parties’ joint account;
- b. paid for the initial cleaning of the property and subsequent cleanings in the amount of EC\$150.00 monthly;
- c. shared the household expenses by paying the utilities and buying food;
- d. sought assistance from her family members to meet the expenses of the property.
- e. painted the banisters on the porch and the burglar bars.
- f. purchased curtains and other décor.

¹² See *Grant v Edwards* [1986] Ch 638 per Nourse LJ

g. paved the driveway and walkway of the property.

[87] Based on the foregoing, learned counsel submits that the weight of the evidence demonstrates that there was detrimental reliance by the defendant on the common intention for both parties to share in the property. Consequently, Counsel further submits that the defendant has a beneficial interest in the property.

[88] In the circumstances of this case, I cannot conclude that the defendant acted to her detriment. I agree with the submission of learned counsel for the claimant that the acts upon which the defendant seeks to establish detrimental reliance are acts done mainly for her sole benefit in occupation of the property. The defendant's contributions are consistent with a spouse living in a home she occupies, not a person altering her position in reliance of a shared property interest.

[89] The situation in this case is in sharp contrast to the state of affairs in the St. Kitts case of **Naeemah Hazelle Menon v Nicholas Menon**,¹³ cited by learned counsel for the defendant on the quantum of the beneficial interest, but also for the proposition that a party to a marriage may make small and/or indirect contributions which are sufficient to establish a common intention and detrimental reliance on same. In that case, the petitioner, who was in Canada in the middle of studies to become a lawyer, was persuaded by the respondent to give up her career in law and return to St. Kitts permanently to start a family life with him. The dispute concerned, *inter alia*, property mortgaged in the sole name of the respondent. There was a major disparity in the contributions of the parties in respect of the property. Ramdhani J (Ag.) found that the parties “had an understanding that the property was being bought for both of them, and that the wife would have a share, notwithstanding that the husband would have sole legal title”.¹⁴ The learned judge found that the petitioner “suffered a detriment by giving up her career choice, and by arranging her life, in child care and career choices”, and did what the respondent

¹³ SKBHCV2013/0007, delivered April 8, 2014

¹⁴ Ibid at para. 67

expected and required of her.

- [90] While I accept that minimal contributions can establish detrimental reliance, I cannot conclude that the defendant acted to her detriment in this case. Her contributions to the property were substantially for her own benefit as the main, and eventually sole, occupant of the property. In any event, the defendant has not crossed the hurdle of establishing a common intention in the parties to share the beneficial interest therein.

Conclusion

- [91] Having heard the evidence and observed the demeanour of the witnesses in this case, in my respectful view, the defendant has failed to discharge the burden of proving that the beneficial interest in the property is other than solely with the claimant. Whereas the defendant intended to share the beneficial interest in the property with the claimant, I find that there was no common understanding between the parties that the defendant would have a share. Given the state of the marriage at the time of the acquisition of the property, I believe the claimant's version of the events, *inter alia*, that at the NHC office, the defendant asked for her name to be added to the title and he said no, and his denial that when she subsequently asked him about adding her name, he told her not to worry, that it was the matrimonial home. From the very beginning, the claimant displayed his intention that the property was to be for his benefit only.
- [92] The evidence reveals, and I accept and find that the marriage having broken down, the claimant being pressured to move out of his parents' house after more than 8 years, acquired the property in his name, and allowed the defendant to reside in the premises to support her while she pursued her studies for a reasonable time to enable her to stand on her own. The defendant was taking an inordinately long time to complete her medical studies (still ongoing with an uncertain end date, spanning 20 years *if* she is successful by the year 2027).

[93] I find that there was no understanding between the parties that the property was acquired for the benefit of them both. Having considered the whole course of dealing, I am of the view that the defendant has failed to discharge the burden of proving that the beneficial interest in the property is other than solely with the claimant. No common intention exists between the parties, and the sole beneficial interest remains with the claimant.

Order

[94] Based on the foregoing, it is hereby ordered as follows:

- 1) The claimant Franklyn Tyson is the sole legal and beneficial owner of the property comprised of house and land situated at Lot #D5 Taylor's Housing Extension, Phase 4, Basseterre, in the island of St. Christopher in the Federation of St. Christopher and Nevis.
- 2) The counterclaim is dismissed.
- 3) The claimant is granted possession of the property.
- 4) The defendant shall vacate the property within three (3) months of today's date.
- 5) By consent, each party shall bear his/her own costs.

Tamara Gill
High Court Judge

By the Court

Registrar