

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0400

BETWEEN:

ANDREW JOHNSON

Claimant

and

SHIRLENE HERBERT

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Andre Thomas for the Claimant

Ms. Sherrine Francis-Hackett for the Defendant

2025: November 4th, 13th.

JUDGMENT

- [1] **ACTIE, J.:** This case raises the issue of whether the claimant holds a beneficial interest in property situate at Calivigny, St. George, which is registered in the name of the defendant.

Background Facts

- [2] The claimant and the defendant were in a romantic relationship for approximately ten years, commencing in 1997. On 31st July 1998, the defendant purchased land in Calivigny for the sum of \$42,000.00 in her sole name, which was financed by a mortgage in the amount of \$41,800.00 from Barclays Bank PLC.
- [3] It is the claimant's evidence that he contributed \$20,000.00(USD) to clear the mortgage for the purchase of the land to satisfy a condition to secure a further mortgage for the construction of a dwelling house.

[4] On 29th April 2002, both parties executed a deed of further charge over the land in the sum of \$258,200.00 for the construction of the dwelling house on the said land. The claimant, who was resident in the USA, said that he made numerous trips to Grenada during the relationship and construction of the house.

[5] It is the claimant's evidence that he purchased fixtures, appliances and furnishings for the dwelling house. The claimant states that he made payments towards the further charge by way of cheques drawn on his Citibank account in the United States. The claimant asserts that he signed cheques which he left in the custody of the defendant for her use towards household and loan expenses, while he resided abroad. The following cheque payments from the claimant to the defendant are in evidence:

- (1) \$3,000.00 USD on 30th March 2005;
- (2) \$1,500.00 USD on 19th August 2005;
- (3) \$1,500.00 USD on 30th September 2005;
- (4) \$1,000.00 USD on 23rd December 2005;
- (5) \$1,000.00 USD on 14th February 2006;
- (6) \$500.00 USD on 12th June 2007;
- (7) \$200.00 USD on 5th May 2009;
- (8) \$200.00 USD on 29th May 2009; and
- (9) \$1,000.00 USD on 25th June 2009.

[6] The claimant asserts that both parties made payments toward the further charge. The claimant avers that there was a common intention and understanding between the parties that he would have a beneficial interest in the property, and that all payments and purchases he made in relation to the property were made on that understanding. He further states that the parties agreed that he would be added to the title of the property.

[7] The defendant admits that she was in an intimate relationship with the claimant between 1996 and 2009 but denies that he made any monetary contributions towards the property. The defendant asserts that she solely bore the cost of procuring building materials for the property and all payment obligations arising

under the deed of further charge. The defendant acknowledges that the claimant purchased certain fixtures which she contends were given to her as gifts.

- [8] The defendant further contends that the claimant migrated permanently to the United States, and that there was no common intention or understanding that he should have a beneficial interest in the property.

Legal Analysis

Whether the claimant is entitled to an equitable interest in the property

- [9] By claim form filed on 10th August 2023, the claimant claims a beneficial interest and compensation under the constructive trust principle. Counsel for the claimant argues that there was a common intention between the parties, having regard to their long-term intimate relationship spanning over ten years.

- [10] In **Grant v Edwards**¹ it was held that a constructive trust is established where there is a common intention that both parties should have a beneficial interest in property, and where the claimant has acted to their detriment in reliance on that intention and in the belief that such actions would confer a beneficial interest. A constructive trust may therefore arise where the legal owner has induced the claimant to believe that they would be entitled to a share in the ownership, either by: an (i) express agreement or (ii) contribution to the acquisition of the property².

- [11] In **Lloyds Bank plc v Rosset**³, the House of Lords held that the fundamental question in such disputes is whether there was, on the basis of express discussions or conduct, any agreement, arrangement or understanding reached between the parties that the property was to be shared beneficially, coupled with detrimental action or alteration of position by the claimant. In the absence of such evidence, a constructive trust may be inferred from direct contributions to the purchase price by the person claiming the beneficial interest.

¹ [1986] 2 All ER 426

² Gissing v Gissing [1971] AC 886

³ [1990] 1 All ER 111

- [12] Counsel for the claimant relies on the decision of Webster JA in **Paul Webster v Lois Dunbar**⁴ where he stated at paragraph 21:

“Common intention can be established in one of two ways. Firstly, by direct evidence of an agreement between the parties that the person without the legal title will have a beneficial interest in the property. Secondly, where there is no express agreement but the parties have conducted themselves in such a way as to show that they intend joint ownership the court will draw the inference of a common intention that they should both have a beneficial interest in the property. In both cases the claimant must go on to prove that he or she acted to his or her detriment on the basis of the express or inferred common intention that in so acting he or she would acquire a beneficial interest.”

- [13] Counsel submits that the claimant relied to his detriment on the common intention by executing the deed of further charge and assuming financial responsibility for repayment of the sums secured.

- [14] At trial, the defendant accepted that the claimant paid a lump sum towards the clearing off the original mortgage to secure the further charge for the construction of the dwelling house.

- [15] At trial, the defendant was somewhat evasive during cross examination about the long-term intention of the parties. The defendant said that she was able to secure the further charge without assistance but only joined the claimant because they were in a committed relationship.

- [16] The defendant contends that the claimant’s contributions were gifts but admitted that the claimant would have a share and interest in the property “up to what he provided”.

- [17] In **Stack v Dowden**⁵, Lord Walker observed that:

“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 the light of their whole course of conduct in relation to it”.

⁴ GDAHCVAP2011/0004

⁵ [2007] 1 ALL ER 929

- [18] The conveyance in 1998, although purchased during the relationship, is in the defendant's sole name. However, the position changed in April 2002, when both parties executed the deed of further charge in the substantial sum of \$258,200.00 to finance the construction of the dwelling house.
- [19] There is further evidence that the claimant shipped to the defendant various items including ceramic tiles, a transformer, fencing mesh, household appliances including a dishwasher and cooktops, kitchen sink, Jacuzzi, and fixtures including lighting fixtures.
- [20] The joint execution of that deed, the claimant's payments towards the first and second loans coupled with his contributions of fixtures and furnishings constitute persuasive evidence that the parties contemplated a shared responsibility and benefit in respect of the property. These acts, occurring well into their relationship, demonstrate a mutual engagement with the property as a joint endeavour, notwithstanding that legal title remained in the defendant's sole name.
- [21] The conduct of the parties and the significant contributions made by the claimant cannot be disregarded. At trial, the claimant testified that he and the defendant met with a builder, one "James" to discuss plans for the dwelling house. It is his evidence that by 2007 the house was completed.
- [22] The court takes judicial notice of the decision of Ellis J. (as she then was) in **Paulette Maduro v Elliot Walwyn Brewley**⁶ where Her Ladyship stated:
- "Where the property was acquired before the relationship began, the cases disclose that it is much more difficult to establish an inferred common intention. Where a claimant asks the court to infer an agreement from contributions to the acquisition or improvement of the property made after the date of purchase, courts have been increasingly more flexible, crediting indirect financial contributions to the payment of household expenses which have permitted the owner to make mortgage payments. However, it is also clear that the mere fact that a financial contribution has been made does not guarantee that a common intention will be inferred. No constructive trust will arise if the contribution is made in circumstances that demonstrate that there was no intention on the part of the contributor to obtain an interest in the property. A common intention will not be inferred if the parties merely do what spouses or partners would ordinarily do."

⁶ BVIHCV2016/0147

- [23] Equity imposes a trust in favour of a person where it would be inequitable on grounds of justice and good conscience for a legal owner of property to retain it exclusively and exclude that person⁷.
- [24] The inclusion of the claimant's name on the deed of further charge is a significant factor demonstrating that the defendant acknowledged and accepted the claimant's financial and proprietary involvement in the property. The defendant admitted that there were no defaults in the loan repayments during the subsistence of their relationship.
- [25] The parties' conduct ineluctably leads to the conclusion that there was a common intention that they would jointly be entitled to the property. It would therefore be inequitable, in the circumstances, to permit the defendant to assert sole ownership and to exclude the claimant entirely. The court finds that the claimant has proved that he acted to his detriment based on an inferred common intention that in so acting he would acquire a beneficial interest in the property, thereby creating the constructive trust.
- [26] The question to be determined therefore is the extent of the claimant's beneficial interest. As stated by Baroness Hale in **Stack v Dowden**⁸, the court's task is to identify the result which reflects what the parties, in light of their conduct, must be taken to have intended. In **Jones v Kernott**⁹ it was held that:
- “...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 contributions are only one of the relevant factors”.
- [27] The court notes that the claimant ceased making contributions towards the mortgage payments following the breakdown of the relationship in 2009. It is the evidence that the loan fell into arrears and was fully paid off by the defendant in or around 2023.

⁷ *Hussey v Palmer* [1972] 3 All ER 744

⁸ [2007] 1 All ER 929

⁹ [2011] UKSC 53

- [28] Both parties were under an obligation to service the loan. The claimant's non-contribution from 2010 undermines his claim to a larger share of the beneficial interest. From 2010 to 2023, the defendant solely serviced the further charge and discharged the outstanding indebtedness. The court notes that as at December 2009, the balance on the further charge account stood at \$214,725.95.
- [29] Counsel for the claimant concedes that the claimant is not entitled to an equal half share, suggesting instead a division of 55:45. Counsel for the defendant on the other hand submits that any division must reflect what is fair on the evidence. The court looking at the totality of the evidence notes the fact that the claimant contributed significantly to a sum almost equivalent to purchase price of the land to clear off the first mortgage. The claimant also made payments on the further charge, purchased tiles, furniture and appliances for the dwelling house. However, the claimant stopped payment of the further charge in 2009 which is seven years after the commencement of construction of the dwelling house. Accordingly, the court is of the view that a division of 70:30 is appropriate in the circumstances.

Conclusion

- [30] For the foregoing reasons and applying the law to the facts, the court finds that the claimant has established a beneficial interest in the property under the constructive trust principle. The extent of that interest is assessed at 30%, reflecting his financial contributions to the loans towards the purchase of the land and the construction of the house, material contributions and the parties' overall course of dealing.

Order

- [31] It is therefore ordered and declared as follows:

- (1) The claimant is the beneficial owner of a 30% share in the property situate at Calivigny, St. George registered in the name of the defendant.
- (2) The defendant holds the property on trust for the claimant to the extent of his share entitlement.

- (3) A valuation of the property shall be conducted to determine the share value of the claimant's interest.
- (4) The defendant shall pay the claimant the determined value of his interest in the property. Alternatively, the property shall be sold, and the net proceeds be shared accordingly.
- (5) The defendant shall pay the claimant's costs agreed in the sum of \$7500.00 within thirty (30) days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar