

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NUMBER: SLUHCV2019/0620

BETWEEN:

PRISCILLA THOMAS

Claimant

and

JOHN FELIX MERVYN STEPHEN

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Diana Thomas Hunte for the Claimant

Mrs. Veronica Barnard for the Defendant

2021: June 30; (Trial)
July 1; (Trial)
July 29, 30; (Closing Submissions)
2025: September 30. (Judgment)

JUDGMENT

[1] **CENAC-PHULGENCE, J:** On 6th January 2020, the claimant, Ms. Priscilla Thomas ("Ms. Thomas"), initiated a claim for remedies based on common intention constructive trusts or alternatively resulting trusts, arising from her contributions to the acquisition and improvement of certain properties obtained during her relationship with the defendant, Mr. John Felix Mervyn Stephen ("Mr. Stephen"). I will refer to the claimant and defendant together as "the parties".

[2] Ms. Thomas alleges that the following nine properties were acquired either individually or jointly by the parties: Parcel 0849B 442 ("the Barnard Hill property"), Parcel 0442B 178 ("the Distillery property"), Parcel 1445B 6 and Parcel 1445B 7

(“the Dauphin properties”), Parcel 0643B 291 and Parcel 0643B 292 (together “the Perou properties”), Parcel 1457B 279 (“the 279 Tivoli property”), Parcel 1457B 532 (“the 532 Tivoli property” and Parcel 1457B 533 (“the 533 Tivoli property”), and approached the Court for the following relief:

- i. A declaration that the defendant holds a share in Parcel 0849B 442 in trust for the claimant;
- ii. Alternatively, that the defendant do pay to the claimant half-share of the value of the improvements made by the claimant and the defendant to Parcel 0849B 442;
- iii. A declaration that the claimant is entitled to remain in possession of Parcel 0849B 442 until such time as the defendant pays the claimant in full for the value of the improvements made by the claimant to Parcel 0849B 442;
- iv. An injunction to be issued restraining the defendant from entering Parcel 0849B 442 until the defendant has paid to the claimant the value of the improvements;
- v. A declaration that the defendant owns a half share of Parcels 1145B 6 and 1445B 7 in trust for the claimant;
- vi. Further and/or alternatively a declaration that the defendant holds a half share of the proceeds of sale of Parcel 0442B 178 in trust for the claimant;
- vii. A declaration that the claimant and the defendant each own a half share in the following parcels of land: (i) Parcel 0643B 291, (ii) Parcel 0643B 292, (iii) Parcel 1457B 279, (iv) Parcel 1457B 532, and (v) Parcel 1457B 533;
- viii. Such consequential orders as may be necessary;
- ix. Costs;
- x. Further or other relief.

[3] At the pre-trial review, the parties agreed that there was no dispute regarding the joint ownership of the following properties: (i) the Perou properties, (ii) the 279 Tivoli property, (iii) the 532 Tivoli property, and (iv) the 533 Tivoli property (collectively “the undisputed properties”). As a result, Ms. Thomas did not pursue any of the reliefs in connection with the undisputed properties. The Court is therefore only concerned with determining Ms. Thomas’ entitlement, if any, in the Barnard Hill property, the

Dauphin properties, as well as the proceeds of the sale of the Distillery property (collectively “the disputed properties”). That being said, it will be beneficial to set out the circumstances surrounding the acquisition of the undisputed properties, as it sheds light on the nature and length of the parties’ relationship, as well as their rationale and conduct when acquiring properties, whether jointly or severally.

The Pleadings

Nature, Duration and Breakdown of The Relationship

- [4] In her amended statement of claim¹, Ms. Thomas avers that she and Mr. Stephen formed a common law relationship in or about the year 1988, when the parties began cohabiting intermittently at the home of Mr. Stephen’s parents located on the Barnard Hill property. In or around 1996, the parties began purchasing properties together, with the common intention that the properties acquired would be for the benefit of the family. She alleges that during 1996 to 2018, the parties acquired the disputed and undisputed properties.
- [5] Mr. Stephen denies that the parties shared a common law relationship since 1988. He avers that in 1987, when he met Ms. Thomas, she resided with her parents and only began living at his parents’ home in 1990 when she became pregnant and was put out by her mother. Further, Mr. Stephen avers that it was he who requested the permission of his parents and brother to build the adjoining apartment, to allow the claimant to reside there for a period until after the baby was born, and then move out. Thereafter, the intention was for the apartment to be rented, to provide income for his mother upon her retirement.
- [7] In reply, Ms. Thomas disputes having been put out of her mother’s home as she resided intermittently with Mr. Stephen at his parents’ home between 1987 and 1989. Thereafter, they lived at Barnard Hill permanently from 1990 to 2018 in the adjoining apartment. At the relevant time, Mr. Stephen and his parents were

¹ Filed 8th January 2020.

supportive of her studies and made arrangements for the child to live with Mr. Stephen and his parents when she went abroad for her scholarship.

- [8] Ms. Thomas avers that the relationship deteriorated rapidly in 2017 after the death of Mr. Stephen's mother. Ms. Thomas too, was overwhelmed with her own mother's illness. She admits that the parties had their differences but were still in a relationship and living together until 2018 when Mr. Stephen moved out of the adjoining apartment after his mother's death. She therefore denies that Mr. Stephen lived at a small cottage (built on one of the Perou properties) at La Croix, as he alleges, or that she caused him stress. She attributes any stress to his poor lifestyle choices. According to Mr. Stephen, he broke up with Ms. Thomas in 2008 and got married to his now wife on 13th June 2019.
- [9] Ms. Thomas relies on the fact that (i) Mr. Stephen slept at the Barnard Hill home with her and the children; (ii) had a family insurance with Clico and later Sagicor; (iii) had keys and entered and left the home whenever he wanted to; (iv) up to the year 2018 she was the sole next-of-kin and solely cared for Mr. Stephen when he was ill; and (v) they continued to make joint investments together, to show that the relationship continued long after Mr. Stephen suggests it did. In addition to this, the family took a holiday in June 2017. Ms. Thomas says she also took care of Mr. Stephen's ailing mother until 2017, and upon her passing, assisted with the funeral arrangements.
- [10] According to Ms. Thomas, it was only when the parties' relationship came to an end in 2018, that they entered into discussions through their lawyers to settle and partition the properties. However, these talks were futile as Mr. Stephen refused to cooperate.
- [11] In 2003, Ms. Thomas had her second child with Mr. Stephen. She avers that her responsibilities for financing the household increased with little help from Mr. Stephen, except for the occasional \$500.00 for the child. There was no contribution by him to the household. Furthermore, during the relationship, Ms. Thomas avers

that she gave a heavy percentage of her earnings and time to care for Mr. Stephen's parents.

The Barnard Hill Property

- [12] According to Ms. Thomas, in 1990, the parties began residing at the Barnard Hill property on a permanent basis. She, then being pregnant with her first child, was given permission by Mr. Stephen's parents to construct an adjoining apartment to their home, to raise their growing family. She says both she and Mr. Stephen contributed to the construction of this apartment, however she contributed a substantial portion from her own funds.

- [13] In or around 1998, Ms. Thomas, after obtaining Mr. Stephen's parents' permission, constructed a retaining wall with her own funds and resources, to prevent land slippage and destruction of the house and apartment.

- [14] Ms. Thomas alleges that in or around 2017, Mr. Stephen's ailing mother, Mrs. Camelita Stephen ("Mrs. Stephen") had a meeting with the parties and offered to leave the home for Mr. Stephen and his family. She requested that Mr. Stephen pay his brother for his share in the Barnard Hill property which was valued at \$50,000.00. Ms. Thomas alleges that with her consent, Mr. Stephen paid the said sum to his brother and became the registered proprietor of the Barnard Hill property in or around 2018.

- [15] Mr. Stephen in his defence avers that the land was bought by his father and brother, Clyde Stephens ("Clyde"), the latter then donating his one-half share to their father in 1992. Mr. Stephen says he then mortgaged that property with his parents' permission to purchase land and build the apartment. Prior to the passing of his mother, she wanted both brothers to inherit the Barnard Hill property. On her passing, Mr. Stephen paid his brother, Clyde his one-half share of the property, at which time he became the sole registered proprietor.

- [16] Mr. Stephen also denies that Ms. Thomas made contributions to the construction or improvements to the apartment. He avers that this apartment was constructed on his own through the use of loans and discounts for materials which he obtained from Monplaisir. This allowed him to build a kitchen and a deck. According to him, Ms. Thomas' only financial contribution was in relation to a concrete slab with a small supporting wall as he had already built a retaining wall to hold his kennels.
- [17] Further, Mr. Stephen denies that his mother had a meeting with him and Ms. Thomas about purchasing his brother's share in the property in 2017. Whilst a meeting did occur, it did not involve Ms. Thomas. Rather the meeting was held with attorneys, Tamara and Andra Foster, his mother, his brother, Clyde and himself. Mr. Stephen alleges that his mother blamed Ms. Thomas for his stress and would never have involved her in such a family meeting. Consequently, he did not need Ms. Thomas' permission to purchase his brother's half share, as it was his mother's wish.
- [18] In reply, Ms. Thomas avers that whilst she cannot speak to the contents of any conversations Mr. Stephen had with his parents when she became pregnant in 1990, she reiterates that he did initiate a conversation with his parents, and the parents had a conversation with her. Both parents took her around the house to show her where the apartment could be constructed. The apartment was never built with the intention that she would vacate when she returned from her two-year study, but rather that the parties would eventually build their own home when they were able to afford to.
- [19] Ms. Thomas alleges that it was she who constructed the apartment by acting as direct supervisor of the construction, designer, ad hoc engineer and project manager, as well as paying the contractor herself, as she was the more financially stable party. According to her, she was present for the construction of the apartment, except the re-purposed patio space which was converted to a kitchenette by Mr. Stephen in her absence, as a surprise for her. She left for Canada in August 1991, by which time the construction was complete except for the patio. Ms. Thomas says

she is also aware that Mr. Stephen took credit from Monplaisir Supplies for supplies. However, he did not fully pay this account until he was called upon to do so in 2010, at which time she assisted with that payment.

[20] Ms. Thomas admits that Mr. Stephen, from a loan taken in 1994 (discussed below), contributed \$6,000,00 towards the renovation of his parents' home. He made renovations to the main house continually and used monies from loan extensions to do so.

[21] Whilst Ms. Thomas says she cannot speak to the discussions held between Mr. Stephen, his brother and the lawyers, she maintains that there was discourse between Mr. Stephen, his mother, and herself. She avers that the parties agreed that Mr. Stephen would pay his brother \$50,000.00 from the proceeds of the sale of the Distillery property and she assisted in obtaining a valuation for the property. She states that this decision was made to secure the parties' son's inheritance in the property.

The Undisputed Properties

[22] Ms. Thomas avers that she alone and with her own funds, paid off the bank loans and legal fees for the purchase of the 279 Tivoli property and the 532 Tivoli property, from her savings account at 1st National Bank. In or around 2009, she says the parties purchased the 533 Tivoli property from Nicholas Bernard and together paid the loan to acquire the said parcel.

[23] Mr. Stephen alleges that in relation to the Perou properties, he mortgaged his parents' property to purchase these parcels. He also gave Victor Lewis (the vendor) the sum of \$40,000 as a deposit. Mr. Stephen avers that Ms. Thomas was pregnant at that time and he only included her name on the Deed for the sake of his children. He also avers that Parcel 0643B 291 of the Perou properties was mortgaged by Ms. Thomas, together with him as surety, to fund the pursuit of her Master's Degree in International Construction Management. According to him, Ms. Thomas repaid eight months, and he had to pay the balance of that loan.

- [24] With respect to the 532 and 533 Tivoli properties (previously Parcel 1457B 281), Mr. Stephen states that a Deed of Partition was executed in 2007 by which the 532 property was partitioned in favour of him and Ms. Thomas, whilst the 533 property was partitioned in favour of Mr. Nicholas Barnard, his cousin who was the other original co-owner. He also states that in 2009, when the 533 property was purchased from Nicholas Barnard, the Barnard Hill property was again mortgaged to invest in the purchase of this parcel.
- [25] Again, Mr. Stephen alleges that Ms. Thomas' name was added to these parcels out of love and affection for his children, even though he purchased the properties. He therefore avers that there was no common intention to buy properties with Ms. Thomas.
- [26] In her reply, Ms. Thomas admits that Mr. Stephen did obtain a loan from the St. Lucia Cooperative Bank in or around 1994. Whilst the stated purpose for the loan was home renovations, the apartment was completed at that time. She alleges that Mr. Stephen used \$22,000.00 of the \$30,000.00 loan disbursement to partially pay for the 279 Tivoli property. According to Ms. Thomas, the seller agreed to reduce the purchase price because she had done some work for him on a project after she came back from her studies. She says a further \$19,200.00 was obtained as a loan extension but this was a refinancing of the previous loan and was paid to the seller towards the balance owed on the 279 Tivoli property.
- [27] Ms. Thomas avers that in 1996, the parties purchased the Perou properties using a mortgage which they both paid towards. However, she says she met the household expenses as well as her share of the mortgage amount. Both parties were living paycheck to paycheck. They then agreed that while Mr. Stephen paid the mortgage, she would bear all household expenses for the entire Barnard Hill property.
- [28] Whilst Ms. Thomas denies that Mr. Stephen lived at La Croix (Perou), she admits that he occasionally spent time on the farm where she built a cottage, in order for him to avoid praedial larceny. She also admits that she took a loan in or around

2012, secured by Parcel 291, for her master's degree. She says that loan was solely paid by her. The parties also secured a student loan for their daughter using the said parcel and are equally liable for its payments. At the time of the filing of the claim, the loan was still subsisting.

[29] According to Ms. Thomas, in or around 2001, the parties purchased Parcel 1457B 281, which was eventually partitioned into the 532 and 533 Tivoli properties. She says they both took the loan to meet the purchase and to pay off the balance owed to Mr. Lewis on the 279 Tivoli property. Ms. Thomas avers that she bore the monthly mortgage payments for these properties alone while still solely continuing to meet all household expenses for the Barnard hill property. Parcel 1457B 281 was partitioned in 2007 and in or around 2009, the parties took another loan to purchase the 533 Tivoli property from Nicholas Barnard. Both parties paid this mortgage together. These properties located at Cas-En-Bas (Tivoli properties) were earmarked by the parties to build their home. They also took a loan for \$17,000.00 to meet legal costs of the transfer which Ms. Thomas says she paid for solely.

[30] Ms. Thomas avers that after the sale of the Distillery property, the parties started construction works on the Cas En Bas properties (Tivoli). Mr. Stephen built a structure with two rooms on the 279 Tivoli property using materials that they jointly acquired overtime. One room was to be used for storage, and the other was for workers who lived far away to stay in preparation for construction. Ms. Thomas started the architectural designs for the home with Mr. Stephen's input.

[31] Ms. Thomas says she excavated three sides of the 532 and 533 Tivoli properties in preparation for construction of a retaining wall and purchased and stored about 70 yards of boulders on site for this purpose. This was in addition to materials she had previously purchased and stockpiled.

[32] Ms. Thomas therefore denies that her name was added to these properties out of charity from Mr. Stephen and that her monetary and other contributions provided good and valuable consideration to the acquisition of these properties.

The Distillery Property

- [33] Ms. Thomas alleges that in or around 2008, the parties were presented with an opportunity to purchase another property (having already purchased the Perou properties) within the St. Lucia Model Farms area in Roseau: the Distillery property. Since she was paying the loan for the purchase of the 279 Tivoli property and the 533 property, and bearing all household expenses, Mr. Stephen undertook to take a loan along with his cousin Mr. Cletus George ("Cletus") to purchase the Distillery property. In or around 2009, Ms. Thomas avers that she began paying another loan for refinance and legal fees.
- [34] According to Ms. Thomas, at the material time, the parties discussed and agreed that she would continue to pay all household expenses including the education of the children of the family (the parties then having a second child), and also supporting Mr. Stephen's parents, while Mr. Stephen acquired the Distillery property with his cousin, Cletus.
- [35] The parties continued with this arrangement until about 2017 when St. Lucia Distillers Ltd., offered to purchase the Distillery property. Ms. Thomas alleges that she was involved in the negotiation process together with Cletus, with Mr. Stephen finalising the negotiations for the sale price of \$871,200.00. The Distillery property was sold on 29th June 2017.
- [36] Ms. Thomas says they agreed to construct their home from the proceeds of the Distillery property on either the 532 or 533 Tivoli properties, and commenced development works to that end. The parties also each used proceeds of the sale to purchase vehicles for their own use – she, \$20,000.00, and Mr. Stephen, approximately \$25,000.00.
- [37] Ms. Thomas alleges that a few months after Mr. Stephen received the money from the Distillery property sale, in or around 2018, he completely changed his attitude towards her and in particular, they started having disagreements about how the funds should be spent. Ms. Thomas avers that Mr. Stephen formed the view that he

should purchase additional lands with the funds and take a loan to build the home, whereas she was of the view that part of the proceeds should be used to fund the home construction. Ms. Thomas says that without her consent, Mr. Stephen used the proceeds of the sale and purchased the Dauphin properties.

[38] In his defence, Mr. Stephen avers that in 2008, he moved out of the Barnard Hill property because his mental and physical status deteriorated due to the constant stress inflicted by Ms. Thomas and went to live in a small cottage that he built at La Croix. He resided there for five (5) years along with his cousin, Victor George and his wife. Mr. Stephen avers that it was during this time that he purchased the Distillery property with his cousin, Cletus. He avers that despite not being together with Ms. Thomas, he chose to include her when purchasing the Distillery property, as well he gave her sums from the proceeds of its sale: \$20,000.00 to purchase a vehicle, \$40,000.00 to complete the payment of her daughter's tuition. He also loaned Ms. Thomas \$12,000.00 to pay for her mother's medical expenses in Martinique.

[39] Mr. Stephen denies that negotiating a sale of a property and making representations on another's behalf constitutes the formation of a trust. He also says he did not need Ms. Thomas' consent to use the proceeds of the sale, as she had no interest in same. Mr. Stephen disputes Ms. Thomas' allegation that he used \$25,000.00 from the proceeds of sale of the Distillery property to purchase a vehicle for himself and states that he borrowed the sum from Bank of St. Lucia. He confirms though, that he purchased the Dauphin properties from the proceeds of the sale of the Distillery property.

[40] Mr. Stephen alleges that since the parties were not living together since 2008, Ms. Thomas could not have paid any household expenses but he was still paying maintenance for his children, provided for their education and was even paying all utility bills for the property Ms. Thomas occupied.

[41] Ms. Thomas in her reply avers that in or around 2008, Mr. Stephen came to her with the proposal to purchase the Distillery property instead of building their home. The loan for the 532 Tivoli property was nearing completion at this time. She was still paying the mortgage for the 532 Tivoli property together with the paid off balance for the 279 Tivoli property, and being saddled with all the household expenses, could not take on the mortgage with Mr. Stephen immediately for purchase of this property. By this time, Mr. Stephen had completed the payments of the Perou properties (Parcels 0643B 291 and 292) and was free. Ms. Thomas says she went to see the land with Mr. Stephen and the parties agreed that it was a good investment and that when Mr. Stephen got a sale for it, they would use the proceeds to build their home instead of facing a mortgage.

[42] Ms. Thomas states that the \$40,000.00 Mr. Stephen speaks about as having been given from the sale of the Distillery property was given to the parties' daughter, and not her (Ms. Thomas), to pay for one semester of their daughter's degree. She admits the loan of \$12,000.00 and avers that this has since been fully repaid.

Allegations of Harassment

[43] Ms. Thomas alleges that since his marriage, Mr. Stephen started visiting the Barnard Hill property often, shouting and screaming at her sometimes from the roadside and sometimes within the yard of the family home, saying that she needs to move out his house. He would be accompanied by his wife at times. She complains that he took some of her pups from her home which the police later found at his home.

[44] In his defence Mr. Stephen avers that whilst he visited the Barnard Hill property, he never interfered, threatened or harassed Ms. Thomas. He only visited to feed his dogs, and Ms. Thomas was usually at work when he visited. He admits to moving into the same neighbourhood as Ms. Thomas, with his wife but denies that the dogs he has belonged to Ms. Thomas as they were his dogs.

[45] Ms. Thomas avers that even after the making of a court order that he should not harass her, Mr. Stephen has breached the court order by having his wife appear on the Perou properties with a police officer presenting a power of attorney and taking materials and items jointly belonging to the parties.

[46] Ms. Thomas avers that Mr. Stephen has put his wife's name on the internet bill, and has created electricity and water accounts for the Barnard Hill property in the name of his wife, thereby preventing her from accurately making payments for utilities. He has been attending the Barnard hill property unannounced with his wife and strangers, and quarreling with her. She had to seek police assistance to have Mr. Stephen cease these activities at the Barnard Hill property.

Evidence

[47] At the trial on 20th June and 1st July 2021, Ms. Thomas and Mr. Stephen were allowed to comment on evidence given by other witnesses under the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 ("the CPR") Rule 29.9(c).

[48] Ms. Thomas filed two witness statements on her own behalf, along with witness summaries of Eustace Alcindor, John Octave and William Felix. Mr. Stephen filed a witness statement on his behalf, along with those of Clyde Steven, Prisca Steven, Maxima Joseph, Cletus George and Primus Gustave. Maxima Joseph and Cletus George did not attend the trial, and their witness statements were accordingly struck out at the trial. Below, I will examine the evidence of each witness as contained in their witness statements and during cross-examination, and make my comments on the weight and credibility I attach to each.

Priscilla Thomas

Nature, Duration and Breakdown of Relationship

[49] The evidence contained in Ms. Thomas' two witness statements was consistent with her pleadings. She gave further particulars of the start of the relationship in 1987 and her pregnancy in 1990. She maintained that Mr. Stephen's parents supported her studies when she earned the scholarship to travel to Canada for her first degree,

and his mother agreed to look after the baby in her absence. Whilst abroad, she sent money to assist with the care of the child born in 1991. She also stated that all holidays from school were spent in Saint Lucia, and she kept in frequent contact with Mr. Stephen's mother.

[50] The parties had a second child in 2003, and Ms. Thomas said she would occasionally receive \$300.00 to \$500.00 monthly for the maintenance of this child, as she was the one bearing the household expenses alone. This amount was never consistent as she made more money than Mr. Stephen at that time.

[51] According to Ms. Thomas, at the time of the sale of the Distillery property in 2017, Mr. Stephen still lived at the Barnard Hill property. He consulted her about the sale, and she attended a meeting on his behalf at St. Lucia Distillers. She said he only began to act differently after he received the money from the sale. However, she admits he did give her \$20,000.00 to purchase a vehicle for herself, and he used \$25,000.00 to purchase a used vehicle for himself. The parties agreed that \$50,000.00 would be used to purchase his brother's half share in the Barnard Hill property. This amount excluded the value of the apartment as the family knew that it was built by the parties. The parties also agreed that they would proceed to build their home at Tivoli/Cas en Bas and that they would leave the Barnard Hill property for their two children.

[52] Ms. Thomas' evidence is that in 2010, the parties took a trip together to Las Vegas. It was a work-related trip for Mr. Stephen, and it was a given that she would accompany him. The parties again took another work-related trip for Mr. Stephen, in 2015, to Chicago. Ms. Thomas annexed her passport page to evidence same.

[53] In 2011, the parties and Ms. Thomas' sister, opened a business, "Beavers", where they went most mornings to fire up a wood oven and prepared pizzas etc., before going to work. That was after Mr. Stephen says he left the relationship allegedly in 2008.

- [54] Ms. Thomas relies on the fact that Mr. Stephen agreed to provide security for her loan in 2012 and a loan in 2015 for their daughter's education, as evidence of their enduring relationship. The parties continued to work together towards mortgages and sourcing materials for their home in Cas en Bas/Tivoli even during the year 2017, after Mr. Stephen sold the Distillery property.
- [55] The parties also held a joint insurance policy for a Suzuki vehicle in 2003 and opened a joint credit union account at Saltibus Credit Union with an opening share balance of \$45.00 on 20th December 2008. Ms. Thomas exhibited documentary evidence to support these claims².
- [56] Ms. Thomas admitted that the relationship was not perfect, and they had their challenges, but she was adamant that they remained together until 2018. Ms. Thomas also gave evidence that she was also going through a difficult time with the failing health of her own mother and that even then, when Mr. Stephen was hospitalized in 2018 for about two weeks, he was completely under her care.
- [57] According to Ms. Thomas, the parties continued to present each other as a couple to friends and family, with pictures to account for occasions such as their daughter's graduation, their son's first communion, vacations to Las Vegas and Chicago, staycations at the Fond Doux Hotel (which Mr. Stephen organized), numerous birthday celebrations, among other events. She said she was listed in the obituary for Mr. Stephen's mother's death in 2017. It was also revealed in cross-examination that when Ms. Thomas accompanied Mr. Stephen to Chicago in 2015, she went with him to assist him because he was sick.
- [58] Ms. Thomas denies that Mr. Stephen lived at the La Croix (Perou) property but agrees that he did go back and forth to the property. She spent time there as well. She stated that the reason was because Mr. Stephen was not accepting of the lifestyle changes he had to make because of his health concerns; high blood pressure, borderline diabetes with challenges to his kidney functioning.

² Exhibited to her first witness statement as "PT25" and "PT26".

[59] In December 2018, when she lost her own mother, Ms. Thomas said Mr. Stephen informed her that he had a new partner. It was only in December 2018, that Mr. Stephen moved out of the family apartment, and into the main house where his mother lived. Not too long after, he permanently carried his belongings and left the Barnard Hill property altogether.

Barnard Hill Property

[60] Ms. Thomas maintained that contrary to what Mr. Stephen had said, she was never put out of her mother's home because of her pregnancy. Rather, she said it was at the initiation of Mr. Stephen that discussions with his parents began in 1990, for the building of the extension to the home so that the parties could have their own space with the growth of their family. The decision to build was an agreement between her and Mr. Stephen as the alternative was to rent.

[61] Ms. Thomas set out in detail her earnings at the time of the construction of the apartment, having shown a history of employment from 1985 to 1990 in the hospitality and construction sectors. She says that this allowed her to be able to construct the apartment herself, both financially and technically, she having the necessary qualifications to see the project through. Therefore, her evidence is that she managed and supervised the erection of the entire structure, which was occupied and completed by April 1991, in time for the birth of the parties' daughter. It was she who paid out of pocket for labour and materials and drew on her network to get discounts, favours and sometimes even free work and material. Whereas according to Ms. Thomas, Mr. Stephen, prior to his employment at La Toc Hotel, was not in Saint Lucia and did not have any savings or funds to draw on.

[62] Ms. Thomas said Mr. Stephen did however contribute towards obtaining materials through the line of credit from Monplaisir Supplies because he did not have the resources for construction of the apartment and later for renovations to the parents' home, which constantly needed repairs.

- [63] It was only in 1991, after she left for school, that Mr. Stephen built the kitchenette and foundation for the timber with a column footing foundation; a surprise for her. Upon her return in 1992, Ms. Thomas said she found that Mr. Stephen also added an extension to his parents' house: a dining area and a balcony. She said they jointly paid for the electrical works for the apartment. Later on, she paid for and supervised a retaining wall on the property.
- [64] Ms. Thomas agreed that Mr. Stephen's knowledge of Mr. Monplaisir resulted in a line of credit from 1990 and even after the apartment was built, for the extension. She said that in or about 1994 and onwards, Mr. Stephen also took some materials on credit from Monplaisir Supplies, for which both parties paid. However, this line of credit was for renovations primarily to the main house and in 2010, she had to settle the outstanding amount.
- [65] Ms. Thomas annexed a design of an apartment comprising of a ground floor with a living and bathroom area approximately 20'-0 x 9'-0, covered patio area 7'-0 x 10'-0, and timber deck 10'-0 x 10'-0, and a first floor of a bedroom approximately 20'-0 x 9'-0, which purported to be the design for the apartment at the Barnard Hill property³. However, the design does not state when it was made and as well, appeared to be computer generated. In cross-examination, Ms. Thomas was asked whether she agreed that in the 1990's drawings were produced freehand and not using computers and she responded yes. This confirms that the drawings could not have been produced in 1990 when the apartment was built. That notwithstanding, the Court accepts Ms. Thomas' evidence that she did design the apartment at the material time.
- [66] Whilst Ms. Thomas' evidence is that she does not make any claim for Mr. Stephen's parents' home at Barnard Hill, she also states that she contributed to its upkeep and maintenance. Her evidence is that she paid the majority of the utility bills on her own from about 1996 until 2017 and that prior to that, both parties would contribute jointly to utility bills which were in the parents' names. Mr. Stephen for many years from

³ Exhibited as "PT2" to her first witness statement.

about 1996 did not even know how to pay a utility bill and made minimal contributions to grocery shopping according to Ms. Thomas.

- [67] Ms. Thomas says that after the death of Mr. Stephen's mother, all the utility bills paid by her and given to the mother, disappeared from the main house. Further, that in 2019, Mr. Stephen took the keys to the main house although the children would also occupy it.

The Undisputed Properties

- [68] Ms. Thomas' recount of how the undisputed properties were acquired remained consistent with her pleadings. In particular, she stated how the properties were acquired in terms of the reasons for acquisition and the financial responsibilities of the parties. She also annexed documents such as the deeds of sale, hypothecary obligations, deposit receipts, bank statements showing loan payments, and annexed documents with respect to Parcel 279 Tivoli property showing that Mr. Stephen entered into the agreement for sale in 1994 and made a deposit of \$20,000.00.⁴ She states that the loan of \$30,000.00 was used for this purpose (and not for home renovations of the Barnard Hill property as Mr. Stephen claims since the apartment was completed at that time), as there was no other source from which the parties could have secured such a large deposit. The second installment payment in 1995 of \$19,200.00, was evidenced by another receipt in the name of Mr. Stephen only.⁵

- [69] Despite this, the 279 Tivoli property is registered in the names of both parties as the purchasers in Deed of Sale dated 8th June 2001⁶. The purchase of this property was secured by way of a mortgage by both parties in favour of the Saint Lucia Cooperative Bank Limited, with the said property being used as the security. This is evidenced by the hypothecary obligation of the same date.⁷ In these documents, the parties are stated as bachelor and single woman, however it is apparent to this

⁴ Exhibited as "PT3" to her first witness statement.

⁵ Exhibited as "PT4" to her first witness statement.

⁶ Exhibited as "PT7" to her first witness statement.

⁷ Exhibited as "PT9" to her first witness statement.

Court that they were in a common law relationship and both resided at Barnard Hill at the relevant time.

[70] Around 2001, the parties were offered another parcel, Parcel 1457B 281, for purchase. As the parties were unable to afford to purchase on their own, Mr. Stephen invited his cousin, Nicholas Bernard, to join in the purchase. The parties financed half of the purchase price by taking a loan against the 279 Tivoli property. According to Ms. Thomas, a loan of \$46,500.00 was taken of which approximately \$33,000.00 was used to pay for the parcel and the balance was used to pay off the sums owed for the 279 Tivoli property. Ms. Thomas states that although the parties took the loan together, she was the one paying the loan for this property and she exhibited her loan activity statement illustrating these payments.⁸

[71] Ms. Thomas' evidence regarding the acquisition of the Perou properties is also consistent with her pleadings. Both parties are the owners as shown by the Deed of Sale dated 6th May 1996⁹ and their addresses are stated as Barnard Hill. According to Ms. Thomas, she and Mr. Stephen paid the legal fees and stamp duty jointly. She and Mr. Stephen started paying that loan together and sharing the household expenses for the Barnard Hill property, however nine months into the loan payments, they agreed that Mr. Stephen would take over the loan payments entirely while she carried the household financial responsibilities of water and electrical bills and the provision of food and the child's needs alone. From her recollection, the household expenses exceeded the loan amount. Later, when cable and internet were installed, she paid those bills as well.

[72] Ms. Thomas' evidence is that since she was the party experienced in building and designing of projects, she built the cottage at the Perou properties with leftover materials she received from projects she had worked on. This included timber posts, plywood, 4" and 2" pvc pipe, galvanized sheets, steel, and concrete blocks. She said she also spent about \$22,000.00 of her personal funds during the phased

⁸ Exhibited as "PT10" to her first witness statement.

⁹ Exhibited as "PT6" to her first witness statement.

approach of building the cottage. According to her, she built the farmhouse with most of her workers who helped on weekends and holidays. She fenced the entire perimeter of the farm, through a credit arrangement with the St. Lucia Agriculture Association. Mr. Stephen, she says, was not in favour of the project then.

[73] Ms. Thomas says that during the construction of the cottage, Mr. Stephen's cousin, Cletus, created many problems which caused her to leave the construction at the stage where only a few doors and windows were needed.

[74] With respect to the mortgage obtained with Parcel 0643B 292 (one of the two Perou properties) as the security, taken for the purpose of financing Ms. Thomas' Master's Degree in International Construction Management and dated 25th January 2012¹⁰, Ms. Thomas is recorded as principal debtor and Mr. Stephen as surety. Both parties are stated as residing at Barnard Hill. In the second hypothecary obligation dated 1st September 2015 and registered at the Land Registry on 9th September 2015¹¹, the parties' daughter is stated as the principal debtor, and Priscilla Thomas and John Felix Mervyn Stephen as surety. In this 2015 document, the parties are stated as common law husband and wife both of Barnard Hill.

[75] Further, when Parcel 1457B 281 was partitioned into the 532 and 533 Tivoli properties, the Deed of Partition dated 27th December 2007 and registered on 11th January 2008¹² stated that Ms. Thomas and Mr. Stephen both resided at Barnard Hill, Castries. The parties purchased the 533 Tivoli property in 2009, and the hypothecary obligation dated 12th November 2009 and registered on 2nd December 2009¹³ states that both parties reside at Barnard Hill, in the quarter of Castries. According to Ms. Thomas, whilst both parties were responsible for this loan, she alone took a loan for the payment of legal fees only. She exhibited a copy of her loan activity statement¹⁴ showing that she bore the responsibility for the legal fees solely.

¹⁰Exhibited as "PT20" to her first witness statement.

¹¹Exhibited as "P22" to her first witness statement.

¹²Exhibited as "PT12" to her first witness statement.

¹³ Exhibited as "PT13" to her first witness statement.

¹⁴ Exhibited as "PT14" to her first witness statement.

[76] During the relationship, Ms. Thomas says she began building a retaining wall, dug trenches, installed a water supply line, installed electrical infrastructure and trekked materials up to the lot at Tivoli/Cas en Bas. She says she had to abandon this project when she found out that Mr. Stephen purchased the two parcels at Fond Assau (the Dauphin properties), as she became aware afterwards that he had no intention of building the house at Tivoli.

The Disputed Properties

[77] In or around 2007/2008, Ms. Thomas says the parties discussed finally building their home on the 279 Tivoli property. Ms. Thomas says she wanted to consolidate all debts, but Mr. Stephen came a few months later, indicating that he had gotten a deal to purchase the Distillery property. His idea was that it was a good investment to turnover, and the parties would be able to sell the land and have enough money to build their house and for their retirement, without needing to take another loan. Due to Ms. Thomas' loan commitments tied to her account for two of the Tivoli properties, she was unable to take the loan with Mr. Stephen. She says it was with her blessing that Mr. Stephen invited his cousin, Cletus, to go into the investment with him. According to Ms. Thomas, she continued to pay the household expenses without Mr. Stephen's assistance and was responsible for the children and the care of Mr. Stephen's mother.

[78] About 10 years later, the Distillery property was sold to St. Lucia Distillers for \$871,200.00. Ms. Thomas says as soon as the deposit was paid, Mr. Stephen opened an account in his name only at Bank of Saint Lucia. When the sale closed, as far as she was aware, he also deposited those funds into this account. Mr. Stephen then purchased the Dauphin properties for \$89,000.00 in his name only. She states that he did speak to her about it, but she told him that she did not think it was a good idea given their earlier plans. Mr. Stephen's suggestion then was to take another loan to build the house at Tivoli/Cas en Bas.

[79] Ms. Thomas states that since the commencement of their relationship, they always gave support to each other, and the common intention was set out in their

discussions and demonstrated by their actions of giving and receiving support to each other continuously.

Allegations of Harassment

- [80] The allegations of harassment in Ms. Thomas' witness statement are consistent with her pleadings.

Assessment of witness

- [81] The comments made by Ms. Thomas on the statements of the other witnesses remained consistent with her version of events. During cross-examination, she remained unshaken in her evidence. I accept Ms. Thomas' evidence and find her to be a credible witness.

William Felix ("Mr. Felix")

- [82] The evidence of Mr. Felix concerned his involvement as a labourer with respect to the properties at Barnard Hill and Tivoli/Cas en Bas. He says that he was employed by Ms. Thomas, whom he knew for more than thirty-five years.
- [83] Mr. Felix's evidence is that in 1998, he was engaged by Ms. Thomas to build a stone retaining wall at the Barnard Hill property, measuring approximately 40 feet in length and an approximate average of 6 feet in depth, and a foundation of approximately 40 x 3 x 10 feet. He says for this job, Ms. Thomas paid for the labour in the sum of \$8,640.00, for him and three other workers.
- [84] She also paid him to construct a reinforced concrete slab measuring approximately 20 feet x 8 feet and the backfilling of a retaining wall. The cost of labour was \$4,320.00 for himself and two other workers. The job lasted about one month.
- [85] Throughout, Mr. Felix says he continued to render services of maintenance work, such as painting and minor roof repair at the apartment at Ms. Thomas' request. In 2017, he also painted the building on the Barnard Hill property for the funeral of the Mr. Stephen's mother.

- [86] Regarding the Perou property, he states that Ms. Thomas designed, provided materials, and instructed him to construct a concrete and timber farm house. He also accompanied her to purchase materials at Builders Choice situate in Cul de Sac, and Capital Management situate in Ciceron. He corroborated Ms. Thomas' evidence that she received materials from her job and that only windows and doors were missing when he left the project. According to Mr. Felix, Ms. Thomas paid him \$5,265.00 for his labour.
- [87] He also fenced the farm. He and Ms. Thomas collected materials from the St. Lucia Agriculture Growers Association for this purpose. He received the sum of \$4,2220.00 from Ms. Thomas for his labour and that of three other workers.
- [88] Mr. Felix says that in 2012, he carried 40 bags of coals to a shed on the farm situate in Roseau (the Distillery property) for storage for Ms. Thomas. He and another worker were also employed by Ms. Thomas to dig a trench measuring 616 feet long from the Sagicor development to the property (Tivoli property). The cost of labour was \$3,360.00.
- [89] In or around 2018, he built a sheep pen for Mr. Stephen at Perou with some of Ms. Thomas' residual materials held at the Tivoli/Cas en Bas property.
- [90] During cross-examination, Mr. Felix remained consistent with his evidence in chief, and appeared to me to be honest. I accept his evidence.

Eustace Alcindor ("Mr. Alcindor")

- [91] In his evidence, Mr. Alcindor states that Ms. Thomas engaged his services during the construction of an apartment at Barnard Hill. The contract was for labour only and she provided the materials. The project lasted 4 months. Ms. Thomas provided drawings, and he saw that she supervised and managed the project herself. She paid their weekly salaries, and the labour costs were about \$44,160.00.
- [92] During cross-examination, Mr. Alcindor stated that he was employed as a supervisor and paid daily at a rate of \$120.00. He did not have a written contract with Ms.

Thomas. He confirmed that the project lasted 3 ½ to 4 months and as far as he was concerned, it was to build a one bedroom, one bathroom apartment.

[93] When asked how much he was paid; he stated that he could not remember but he was paid \$120.00 daily. He came up with the figure of \$44,000.00 because two workers were paid at \$50.00, two at \$80.00 and one at \$120.00. He worked sometimes five to six days a week.

[94] Mr. Alcindor admitted that Ms. Thomas had a little drawing when she engaged his services, but he could not remember clearly if it was by hand. It was suggested to him that the drawing may have been by hand, which he accepted. This is consistent with Ms. Thomas' own evidence during cross-examination in that regard.

[95] I found Mr. Alcindor to be truthful when giving his evidence. When he could not recall matters, he stated so plainly and did not try to embellish his account of his knowledge of the construction process in 1990. I also accept his evidence.

John Octave ("Mr. Octave")

[96] Mr. Octave states that he provided services for Ms. Thomas. In particular, she engaged his services and that of three other workers to fence ten acres of the farm, with cedar posts measuring approximately 8 feet long from Ti Rocher, Micoud. For this job, he received the sum of \$3,900.00 and \$500.00 from Ms. Thomas as compensation for his labour and cedar posts respectively. The job took more than a year to complete as he worked in phases as monies and materials became available. No questions were posed to this witness during cross-examination and the Court accepts his evidence as contained in his witness summary.

John Felix Mervyn Stephen

Nature, Duration and Breakdown of Relationship

[97] In his evidence in chief, Mr. Stephen states that he met Ms. Thomas around 1989, at which time she worked at SLASPA. In his defence, he stated that they met in 1987.

- [98] He states that his mother took physical care of both children as Ms. Thomas never showed an interest in their wellbeing. She never cooked, cleaned and rarely performed normal housekeeping duties in the home. He claims that it was he who maintained both children fully because Ms. Thomas always complained that she did not have money. She was always taking loans to further her education leaving the children's well-being solely to him and his mother assisted when possible.
- [99] According to Mr. Stephen, in 2008 he moved out of the apartment he shared with Ms. Thomas due to the constant arguments and what he considered to be the total neglect of his emotional and physical well-being. He says he went to live in an uncompleted structure which he and Ms. Thomas owned on the Perou/La Croix lands.
- [100] Mr. Stephen's evidence is that despite being separated, he still gave Ms. Thomas money towards the purchase of her vehicle, to cover her mother's health expenses and her own health expenses. He also paid \$40,000.00 towards his daughter's tuition fees as the loan taken by Ms. Thomas was insufficient to cover her four-year course.
- [101] Mr. Stephen says that approximately three years before his mother passed away, he left the Perou/La Croix cottage and moved into his mother's home to help care for her until her death in 2017. Less than a year after his mother's death, he reconnected with Shanna, whom he referred to as his current wife, and they started dating. He decided to move in with her in December 2018.

Barnard Hill property

- [102] Mr. Stephen says in 1990, Ms. Thomas became pregnant and a few months after she received a scholarship to study in Canada. She cried to him that her mother asked her to move out of her home because of the pregnancy, so he had no other choice but to seek the permission of his parents and brother to build a one bedroom and toilet apartment type structure adjoining their house at Barnard Hill. After much discussion, they agreed but said that after Ms. Thomas gave birth and finished

university, she and him were to move out of the house and the apartment would be kept as a form of income for the parents' older years.

- [103] Ms. Thomas left for Canada when their daughter was four months old. Whilst she was away, Mr. Stephen says he added the kitchen and deck, and extended the living room in his mother's house. He built this with the assistance of Adrian Monplaisir and Ricardo Leon, the contractor. He says Ms. Thomas never contributed to the cost of the construction of the apartment. In support of this, he exhibited two letters from Mr. Monplaisir and Mr. Leon marked as "JFMS1" and "JFMS2" respectively.
- [104] Exhibit "JFMS1" is a letter dated 13th August 2020 and states that Mr. Stephen was offered a line of credit for building materials in the amount of \$15,000.00 in the year 1991. Because of the nature of the friendship, he was given the option of a monthly repayment plan for a one-year period. In "JFMS2", a letter dated 31st October 2020, Mr. Leon states that he was commissioned to carry out some work at Mr. Stephen's mother's residence at Barnard Hill. While he was carrying out this work (on the main house), he met her son (Mr. Stephen), who stated that he had a room adjoining his mother's house and would like to add a kitchen and a deck to this as a surprise for Ms. Thomas when she returned to Saint Lucia. The letter states that Mr. Stephen also had him extend the living room area of his mother's house, creating additional space, which became the dining room of his mother's house and also a storeroom and laundry room. This project was undertaken in the year 1993 and the materials were procured from Monplaisir where Mr. Stephen had an open account. Interestingly, Mr. Ricardo Leon who seemed to have such relevant evidence was not a witness at the trial.
- [105] According to Mr. Stephen, Ms. Thomas returned from her studies in 1994 and moved into the apartment with him. He claims that they continued living in the apartment and never moved out because their relationship from then had always been stormy. Twelve years later, the parties had a second child at Ms. Thomas' insistence that she was getting older and wanted another child preferably with the

same father. Mr. Stephen claims that Ms. Thomas used her money to fix her mother's home.

[106] When their second child was a few years old, Ms. Thomas sought his mother's permission to build a slab on the side of the house to enable the child to ride his bike. According to Mr. Stephen, this slab was Ms. Thomas' only contribution to the property.

[107] Mr. Stephen gave evidence that one year before her death, his mother called a meeting with Andra Foster, Tamara Foster, his brother Clyde and himself to settle her affairs. Her wish was that he got the house, and Clyde got the land since he was the one who initially purchased it. His brother asked him to pay \$50,000.00 for the land, which he did pay. He says Ms. Thomas was not a part of this discussion as the parties were separated by then.

The Undisputed Properties

[108] In his evidence in chief, Mr. Stephen says that whilst Ms. Thomas was away, he mortgaged the Barnard Hill property to purchase the 279 Tivoli property. However, he does not provide any evidence of this mortgage. Interestingly, Mr. Stephen does not speak about the loan taken from the Saint Lucia Co-operative Bank which was executed contemporaneously with the Deed of Sale for the 279 Tivoli property, evidencing that he and Ms. Thomas took a loan together to purchase the property. Mr. Stephen says he included Ms. Thomas' name on the deed due to the common bond they shared: their daughter.

[109] He says further, that in 1996 he purchased the Perou properties. At the time of purchase, he requested that Ms. Thomas assist with payments however she refused, and he was left to make payments all alone for a period of nine months. He included her name on the deed because at that time, he was of the opinion that they had children together and it was in their best interest to do so.

[110] Mr. Stephen says in 2009, his cousin, Joey (Nicholas Barnard), introduced him to a deal to purchase the 532 and 533 Tivoli properties. The evidence, though, is that it

was one parcel (Parcel 1457B 281) initially bought in 2001 and later subdivided in 2009 into parcels 532 and 533. He states that he included Ms. Thomas' name on the Deed, and they applied for a joint loan from 1st National Bank and Ms. Thomas agreed to assist him with repayment of the loan. He says they thought it would be a good investment for their children's future. This evidence is in stark contrast to Ms. Thomas' evidence that they paid for Parcel 281 from a loan secured by the 279 Tivoli property and the documentary evidence which shows that the 1st National Bank loan taken by Mr. Stephen and Ms. Thomas in 2009 was to purchase the 533 Tivoli property from Nicholas Barnard.

- [111] Regarding the incomplete structure at La Croix (on the Perou properties), Mr. Stephen states that he used his own funds, and his cousins Cletus along with Vern Guard assisted him with labour in completing the structure. He installed electricity, water and cable tv. They also planted many trees near the house. He employed Sean (also referred to as Shaun) Denis to build a driveway to the cottage and his excavator to build pig pens. He attached cheque stubs as evidence of this payment (JFMS4). "JFMS4" contains copies of two cheques issued by Mr. Stephen, one dated 29th August 2017 in the sum of \$600.00 for used plywood and another dated 4th July 2017 in the name of Shaun Denis in the sum of \$3306.00 (the purpose is illegible). Mr. Stephen says that his cousin Victor George then moved in with him and they lived at La Croix cottage for approximately four years.

The Disputed Properties

- [112] In relation to the Distillery property, Mr. Stephen's evidence was simply that he purchased this property in 2008 with his cousin, Cletus, and they later sold it to Saint Lucia Distillers in 2017. In relation to the Dauphin properties, again his evidence is very brief and simply that in 2018, he purchased these two parcels of lands with his own funds as an investment for his retirement.

Allegations of Harassment

- [113] According to Mr. Stephen's evidence, he never harassed Ms. Thomas but did make visits to the Barnard Hill property to clean up the property and replace the electrical wires.

Cross-Examination

- [114] During cross-examination, Mr. Stephen stated that there was no design for the apartment built on the Barnard Hill property, and the parties just had to use the available space to build. He agreed that Ms. Thomas paid the contractors but said it was he who gave her the money to pay. He also stated that both of them gave instructions to the labourers.
- [115] When asked if he ever lived in the apartment, he stated that he slept downstairs on the couch since 1991. When asked if the apartment was built for him, their daughter and Priscilla to live, he stated that he was at his mother's house just before the child was born. After the apartment was completed, he moved back and forth from his mother's house to the apartment.
- [116] Mr. Stephen claimed that he gave Ms. Thomas a monthly allowance and she would use it as she pleased. He could not answer how much he gave her and instead stated that out of the monies he gave her, part of it was used to pay workers. This was the first time he was saying that he had given Ms. Thomas money to pay workers. He was pressed on how much money he gave Ms. Thomas during this time, but again he answered indirectly, saying that, "the guy was paid about \$8,000.00 and he took materials for about \$15,000.00". He did not give a straight response. He denied that any supervision of the building of the apartment was really required, which is quite curious.
- [117] Mr. Stephen could not recall whether he took a loan to build the extension to his mother's home in 1994.
- [118] In cross-examination, Mr. Stephen admitted to purchasing the property at the Perou properties with Ms. Thomas and that the lawyer who did the deed was Ms. Thomas' attorney. He clarified that in relation to the mortgage taken to purchase the Perou properties, he meant to say that Ms. Thomas only made 9 months payment towards the mortgage. He also agreed during cross-examination that it was not him who purchased these properties but that it was both he and Ms. Thomas who made the

purchase, which is inconsistent with his evidence in chief at paragraph 9 of his witness statement.

[119] Mr. Stephen, when asked whether Ms. Thomas built the structure on the Perou properties, he responded, "We all started building it." When it was suggested that Ms. Thomas supervised the construction of the structure, Mr. Stephen responded that Ms. Thomas was there and did some part, and he also gave some input. He could not recall if Mr. Felix built the structure but could recall him taking care of his sheep. Mr. Stephen was adamant that Ms. Thomas did not contribute any money to the structure.

[120] It was suggested to Mr. Stephen that Cletus came to help finish building the structure at Perou and he disagreed, saying it was over all the years that he helped. He accepted though, that the driveway was built in concrete in 2017.

[121] Regarding the payment of bills at Barnard Hill, Mr. Stephen said in cross-examination that he gave Ms. Thomas money to pay them. He then went on to say that he did not say that she paid no bills, but he gave her money to do so. This evidence did not feature in his witness statement nor in his pleadings.

[122] When asked whether he and Ms. Thomas were engaged, and Ms. Thomas broke it off, Mr. Stephen responded in his usual evasive and indirect manner that she took the ring, but he cannot say what she did with it.

[123] When he was asked about the proceeds of sale for the Distillery property, Mr. Stephen stated that he gave Ms. Thomas an "advance" of \$20,000.00 when he got the payment from St. Lucia Distillers. He was asked to clarify what he meant by an "advance" to which he responded that "I just wrote a cheque". No clarification was actually provided by Mr. Stephen. He denied that any of that money was to be used for construction of their home.

[124] Mr. Stephen agreed that there was a shed built at the Tivoli property but disagreed that it was a site shed in preparation for the construction of their home. It was a

storage shed not a site shed. He accepted that Ms. Thomas put materials and dug a trench at the Tivoli property but disagreed that a house was going to be built there. He agreed that Ms. Thomas did have stones there and she brought sand as well.

[125] Mr. Stephen was asked whether he moved back to his mother's home before she died and he responded that he was always at La Croix. Again, this answer was vague as the evidence shows that he did not always reside at La Croix, as according to him he was between his mother's house and the apartment during the relationship.

[126] Mr. Stephen admitted to travelling with Ms. Thomas in 2015. When asked whether they were together in 2015, his response was that he took a picture and when he put it up on social media Ms. Thomas got upset, which could hardly be said to have answered the question. He denied that they were a couple in 2018.

[127] Mr. Stephen admitted that Ms. Thomas stored coals at the Distillery property but denied that she put a shed there and said she did not even know where the property was and that someone had brought the coals there for her.

[128] Mr. Stephen admitted that the parties had a joint account at Saltibus Credit Union. He denied that they owned a vehicle together despite being referred to the Motor Vehicle Insurance Policy in both his and Ms. Thomas' name in 2003. He stated that he did not consider it as his, as Ms. Thomas was the one who drove and paid for the vehicle.

[129] In cross-examination, Mr. Stephen said he met Ms. Thomas at the end of 1988 and not 1987. In his amended defence, he stated that he met her in 1987 and then in his witness statement he said 1989. He accepted that when he met Ms. Thomas she was already working. He denied being a couple from 1988 as they were still getting to know each other. Rather, they became a couple when she told him that she was pregnant and "he had to do what he had to do".

[130] I found Mr. Stephen's evidence to be inconsistent in critical aspects with his pleadings and evidence in chief. His responses to many questions were evasive as

he either stated that he could not recall or simply did not answer what was asked of him. I formed the opinion that he was not a witness of truth and was attempting to withhold evidence from the Court. His evidence was also self-serving in many respects.

Clyde Steven (“Clyde”)

- [131] Clyde is Mr. Stephen’s brother; almost 17 years his senior. He was once married to Prisca Steven who also gave evidence in this matter. According to Clyde’s witness statement, during 1969-1970, the Government offered to sell lots to the residents of Barnard Hill. His father’s monthly earnings were not enough to purchase the lot, so he agreed to pay the loan which was \$70.00 monthly, since he was employed with Geest Industries Ltd. The Deed was registered in his and his father’s name.
- [132] He stated that in 1972, he moved out of the family home. He states at paragraph 8 of his witness statement that about 1990/1991, Mr. Stephen held a meeting with his father, mother and him, saying that his girlfriend, Ms. Thomas, was pregnant and her mother wanted her out of the home. Mr. Stephen wanted permission to build an additional room and bathroom adjoining his parents’ home. His mother persuaded he and his father to allow Mr. Stephen to do so, on the condition that they find alternative living space as soon as it was financially possible for them to do so. After they left, the room would serve as rental income for his parents.
- [133] Ms. Thomas received a scholarship to study in Canada, and his mother agreed to take care of the baby until she finished her two-year course. During her absence, Mr. Stephen took it upon himself to make improvements to the room, adding a kitchen and a deck. He states at paragraph 10 of his witness statement that this was done with the intention that when Ms. Thomas returned, they would move out to their own accommodation.
- [134] According to Clyde’s evidence, a few months before the passing of their mother, she called a meeting with Mr. Stephen and him, Andra Gokool Foster and Tamara Foster to discuss the property. Because Mr. Stephen lived with her and ensured her

wellbeing, she wanted him to have the property and pay Clyde a share to which he agreed and accepted. They therefore had the evaluation done and fulfilled the agreement.

[135] When tendering his witness statement as his evidence in chief, Clyde indicated that he wished to change paragraph 8 of his witness statement. Contrary to what is stated in that paragraph, Clyde indicated that he was not at that meeting where Mr. Stephen asked for permission to build the additional room. He confirmed that everything else in the paragraph was true and correct.

[136] During cross-examination, Clyde admitted that he was not at the meeting referred to above and he would not know what they spoke about at that meeting. He said he saw the things stated at paragraph 8 of his witness statement for the first time when he saw the witness statement. Clyde was asked whether he knew who built the apartment and he responded based on what Mr. Stephen said, it was he who built the apartment.

[137] Clyde was asked about his statement at paragraph 10 of his witness statement which states that: 'during the time that she (Ms. Thomas) was away, Mervyn took it upon himself to make additional improvements to the room... All these were done with the intent that when Priscillia returned they would move out...' His response was surprising as he said he did not make this statement.

[138] It is clear to this Court, that Mr. Stephen attempted to 'put words in the mouth' of this witness to corroborate his version of events. After moving out of the home in 1972, this witness simply did not have the knowledge of the matters that were being imputed to him. Despite this, I found the witness to be honest in his responses during cross-examination, although his evidence did little, if anything, to assist the Court in resolving the issues surrounding the properties and the parties' relationship.

Prisca Steven ("Ms. Steven")

[139] Ms. Steven's evidence is not unlike Mr. Stephen's. She states that Mr. Stephen began dating Ms. Thomas in 1989/1990. Not too long after Sister Stephen (Mr.

Stephen's mother) confided in her that Ms. Thomas was pregnant and her mother had asked her to leave the house. According to Ms. Steven, Sister Stephen told her that Mr. Stephen was thinking of having them live with him, but since she was a Christian, it did not seem the right thing to do, so he suggested adding a room to the side of her house to which she agreed. Mr. Stephen's friend, Adrian Monplaisir assisted him with the building materials required to build the room. Ms. Steven states that Ms. Thomas was still at her mother's home when the room was built.

[140] Ms. Steven says Sister Stephen explained to her that she had a discussion with Mr. Stephen and Ms. Thomas, and the agreement was that after the child was born and Ms. Thomas was finished with her studies, they would move out and leave the room as a source of income for her since she was no longer working. Ms. Thomas returned in 1994 from her studies, and according to Ms. Steven, failed to honour this agreement, and instead went on to have a second child.

[141] Ms. Steven says Sister Stephen later requested that she speak to Clyde to transfer his share in the land to his father so that Mr. Stephen would be able to use the property as collateral to acquire a loan to buy some land.

[142] For the years prior to Ms. Thomas moving in with her, Sister Stephen never had history of disconnection of water or electricity. Disconnection became a regular occurrence because Ms. Thomas, who was responsible for the payment of bills, neglected to do so. Sister Stephen would complain that the cooking gas tanks were empty and Ms. Thomas did not purchase any. According to Ms. Steven, Sister Stephen cooked daily and did not mind feeding the children, but Ms. Thomas made no effort to assist. Sister Stephen had the sole responsibility for caring for the children.

[143] During cross-examination, Ms. Steven stated that she had a good relationship with Ms. Thomas and a very close relationship with Sister Stephen. She did not agree that Ms. Thomas was useless as her witness statement seemed to suggest, but said rather this opinion was based on the complaints her mother-in-law kept making to her.

[144] Ms. Steven was asked if she had personal knowledge of everything she said, to which she responded, “some of them”. She said that Sister Stephen told her that Adrian Monplaisir gave Mr. Stephen materials. She also said that when she went to visit the home at Barnard Hill, she did not see Ms. Thomas. She did admit though that she would not know if Ms. Thomas was at Barnard Hill on the days that she was not there.

[145] She maintained that Ms. Thomas and Mr. Stephen were to leave the apartment after a while, when they had “picked themselves up, about three years or so”. This reference to three years was not in her witness statement and she said she came up with that on her own. Ms. Steven gave evidence that Sister Stephen told her that Ms. Thomas did not pay the bills. From her cross-examination, after her divorce in 2002, she did not come to the house as often and did not know who was taking care of the children after that time.

[146] Although this witness did maintain much of what was said in her evidence in chief during cross-examination, critically, she admitted that much of it was not from her personal knowledge, but what was told to her by Sister Stephen. This witness’ evidence does little to assist in resolving the issues in this case as it is primarily based on hearsay which makes it unreliable.

Primus Gustave (“Mr. Gustave”)

[147] Mr. Gustave’s evidence is that when Mr. Stephen was about 23 years, he met Ms. Thomas, and she got pregnant with their child sometime after. He recalls his aunt, Mr. Stephen’s mother, Carmelia Stephen (who he called ‘mammy’), informing him that she was allowing Mr. Stephen to build a room on the side of the house since Ms. Thomas’ mother wanted her out of her house. She said it was temporary since they agreed to move out as soon as Ms. Thomas came back and settled down in a job. Mammy he said was hoping to use the room as income since her husband was unable to work and all she depended on was a food stall in the Castries market.

- [148] According to Mr. Gustave's evidence, Mr. Stephen built the apartment and bought all the materials from his friend Adrian Monplaisir. He said Ms. Thomas moved in, and when the child was about 4 months old, she left Saint Lucia for Canada. When she was in Canada, Mr. Stephen added a kitchen and a deck to the room. He says when Ms. Thomas returned from Canada, she moved in with Mervyn. Both Mr. Stephen and Ms. Thomas' evidence though is that they started living together before she left for school. Mr. Gustave says that years passed and Ms. Thomas had another child and remained at the apartment. According to him, Mr. Stephen and Ms. Thomas could be seen and heard arguing constantly.
- [149] Mr. Gustave says Mr. Stephen moved out of the apartment in 2008 and went to live on his farm, so he was left to help mammy with buying her groceries and gas and taking her to the doctor. He also assisted with insulin injections and helping to pay utility bills because they were always getting disconnected. Mr. Stephen would assist on most occasions with these when he could.
- [150] Mr. Gustave says he would sometimes pay a vagrant to assist with the laundry since mammy did not have a washing machine, and Ms. Thomas would not allow her to use hers. In cross-examination though, Mr. Gustave said that when Ms. Thomas bought the new machine, she told mammy to come to use the machine at her home, but mammy could not climb the stairs. When asked about his statement that Ms. Thomas did not allow mammy to use the machine, he said he did not know.
- [151] Mr. Gustave claims he stayed with mammy as her caretaker until Mr. Stephen moved back in 2014 when he fell sick on the farm. When mammy passed away, he moved out.
- [152] During cross-examination, he explained that he moved in with his aunt Carmelia in about 1980, after Hurricane Allen and he was not living with her in the 1990's because he was living in New Village and Old Victoria Road in the 1990's. He only moved back when Mrs. Stephen died in the 2000's. Mrs. Stephen would have passed away sometime in 2007. But when asked whether he moved in by mammy in 2011-2012, he said yes. It is unclear when he actually moved back in by mammy.

- [153] Mr. Gustave admitted in cross-examination that when Mr. Stephen was building the apartment, he was not living at Barnard Hill. It was his aunt, Sister Stephen who told him that Mr. Stephen built the apartment and bought all the materials from a close friend. It was Mr. Stephen who told him about Ms. Thomas being pregnant. He also said that his aunt, mammy told him that they built the apartment and when “they settle up”, they will go and build their home. It was not as soon as Ms. Thomas came back.
- [154] Despite never mentioning that Ms. Thomas took care of his aunt, Sister Stephen, Mr. Gustave admitted in cross-examination that Ms. Thomas would also take his aunt to the doctor, but after begging her. He agreed that Ms. Thomas also took Sister Stephen to the hairdresser and the grocery, but that his aunt had to pay at the grocery. He also never mentioned that there was a lady who came to take care of mammy but admitted in cross-examination that this was so.
- [155] According to Mr. Gustave, his aunt would give him money to pay the electricity bill. It was suggested to him that they would get disconnected because he did not use the money for that purpose, which he denied.
- [156] This witness’ knowledge of some of the critical matters to this case, such as the building of the apartment and when Ms. Thomas and Mr. Stephen began living with each other, is unreliable as it is based on what he was told by either Mr. Stephen and ‘mammy’.
- [157] I found Mr. Gustave’s evidence to be self-serving, especially as he failed to mention Ms. Thomas’ involvement in care for mammy. He also was not credible in some respects when he made it seem like Ms. Thomas refused to allow mammy to use the washing machine when that was not the case as he admitted in cross-examination. Like Ms. Prisca Steven’s evidence, Mr. Gustave’s evidence does not assist the Court to resolve the relevant issues in this matter.

Injunction and Site Visit

[158] On 10th January 2020, I granted an order continuing the interim injunction granted on 24th December 2019. By that order, Mr. Stephen (i) was restrained whether by himself, his servants and/or agents from harassing or pestering Ms. Thomas or encouraging or instructing any other person to so do and (ii) undertook not to access or go to the apartment occupied by Ms. Thomas on the Barnard Hill property but was not precluded from accessing the house which is on the said parcel for the purposes of its reasonable upkeep, pending the determination of the substantive proceedings.

[159] Mr. Stephen applied for a variation of the interim injunction Order in January 2021 to allow him to reside in the Barnard Hill property since he had had a stroke and was no longer employed. The Court conducted a site visit to the property in February 2021 to assess the entrance area to the property. I concluded that the main house on the Barnard Hill property looked deteriorated and given Mr. Stephen's health and work situation, the asset ought not to be allowed to deteriorate further. The 10th January 2021 Order was therefore varied to (i) restrain Mr. Stephen from accessing or going to the apartment occupied by Ms. Thomas on the Barnard Hill property and by extension the area of the yard leading to the said apartment except with her express agreement and consent; and (ii) permit Mr. Stephen to occupy the main house situate at the Barnard Hill property for the purpose of his residence from the date of this Order and to undertake reasonable repairs and maintenance to make the house habitable and for that purpose he was allowed to have workers on the property. This was to obtain until determination of the substantive claim.

The Law

[160] Ms. Thomas relies on the decision of Baronnes Hale of Richmond in **Stack v Dowden**¹⁵ in support of her position that a constructive trust should be inferred in her favour with respect to the disputed properties. In particular, she relies, *inter alia*, on paragraphs 69 and 70, which set out non-exhaustive factors the court may consider in relation to a property which was jointly acquired. They are as follows:

¹⁵[2007] 2 AC 432.

“69. 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. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.

70. This is not, of course, an exhaustive list. There may also be reason to conclude that, whatever the parties’ intentions at the outset, these have now changed. An example might be where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is significantly different from what they had then.”

It should be noted, as a distinguishing feature to the case at bar, that **Stack v Dowden** was decided in the context of a marriage and the legal ownership of the home being placed in the name of the parties.

[161] Mr. Stephen relies on **Lloyds Bank PLC v Rosset & Another**,¹⁶ and submits that Ms. Thomas must prove on the basis of evidence of express discussions between

¹⁶ [1990] 1 All ER 1111.

he and Ms. Thomas 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 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 claimant's part or failing that, whether there had been direct contributions by Ms. Thomas to the purchase price.

[162] The finding of an agreement or arrangement to share can only be based on evidence of express discussion between the parties, however imperfectly remembered or however unprecise their terms may have been: **Lynn Anne Abbott v Dame Norman Laurence Abbott**.¹⁷

[163] Before the Court can decide whether there was a common intention that Ms. Thomas should have a beneficial interest in the disputed properties, the issue of whether the parties continued to have a common law relationship when the disputed properties were acquired, must first be determined.

Issues

- [164] As such, the issues for determination are as follows:
- A. What was the duration of the common law relationship?
 - B. Whether there was a common intention that both parties should have a beneficial interest in the disputed properties?
 - C. Whether the Claimant acted to her detriment based on this common intention?

Issues B and C will be dealt with together.

Discussion and Analysis

A. What was the duration of the common law relationship?

[165] The duration of the relationship is highly contested on both sides. For Ms. Thomas, she alleges that the parties formed a common law relationship when they began

¹⁷ Privy Council Appeal No. 142 of 2005.

cohabiting intermittently in 1988. Mr. Stephen on the other hand alleges that they formed the relationship in 1990, when they began living together. During cross-examination, he admitted that he met Ms. Thomas in 1988, but they were not yet a couple as they were getting to know each other and only became a couple when she told him she was pregnant, and so “he had to do what he had to do”. The other witnesses for Mr. Stephen, Prisca Steven and Clyde Steven, also attest to knowing about Ms. Thomas from around 1989/1990. The evidence suggests, and I accept, that although the parties met in 1988, they only began a common law relationship in 1990 when they began living together at the Barnard Hill apartment.

[166] I accept Ms. Thomas’ evidence that the relationship continued until December 2018 and did not end in 2008 as Mr. Stephen alleges, when he left the Barnard Hill property to live at the La Croix cottage. This finding is based firstly on the conduct of the parties with respect to their finances and acquisition of properties. In 2009, the documentary evidence shows that the parties purchased the 533 Tivoli property from Mr. Stephen’s cousin Nicholas Barnard and were both responsible for the hypothecary obligation, in which they were stated as both residing at Barnard Hill, in the Quarter of Castries. I also accept Ms. Thomas’ evidence that it was she who paid the legal fees and taxes from her own funds in relation to this property.

[167] If the parties were no longer together as Mr. Stephen suggests, I find it highly unlikely that Ms. Thomas would have borne this responsibility solely. Mr. Stephen also agreed to be surety for Ms. Thomas’ student loan in 2012. Further to this, the 2015 hypothecary obligation for their daughter’s tuition stated that both parties resided at Barnard Hill, and they are described as common law husband and wife.

[168] Ms. Thomas’ evidence that the parties continued to share financial responsibility for the acquisition of the undisputed properties, and she continued to be responsible for the household is also convincing, as it shows the parties pooled their resources in larger financial matters and clearly allocated who would shoulder which financial responsibilities. The parties also opened a joint credit union account in December 2008. The Court therefore cannot accept Mr. Stephen’s evidence that the

relationship ended in the acrimonious way he suggests in 2008, when the parties continued to share financial responsibilities and further, he even involved her in the negotiations for the sale of the Distillery property in 2017. It begs the question why would you involve someone with whom you are no longer in a relationship with in such a significant investment.

[169] Secondly, the documentary evidence shows that Mr. Stephen continued to reside at the Barnard Hill property after 2008 as his address was not stated as La Croix at any point as seen from the various documents. Thirdly, Ms. Thomas' travel documents support her claims that the parties travelled as a couple for Mr. Stephen's work trips in 2010 and 2015. The photographs taken as late as June 2017 also show the parties presenting as a couple at a restaurant. The Court also accepts Ms. Thomas' evidence that she was recognized in Mr. Stephen's mother's obituary in December 2017.

[170] For all the above reasons, I do not accept Mr. Stephen's evidence that he only took Ms. Thomas on those trips or added her to the deeds of sale for the undisputed properties because he had children with her. In the same vein, I do not accept that Mr. Stephen had been sleeping on the couch since 1991, especially when the parties had a second child in 2003. The picture which Mr. Stephen attempted to paint about his relationship with Ms. Thomas and the reasons for including her as an owner on the undisputed properties is just not probable in light of all the evidence.

[171] It is clear that the relationship was in its penultimate decline since 2015 based on the Ms. Thomas' own evidence when she asked Mr. Stephen to move on. However, I do not accept that it ended at that point as they continued to operate as a couple even after this. Whilst the relationship may have been stormy, with Mr. Stephen sometimes going to stay at the La Croix cottage in Perou and the parties having constant arguments, I am not of the opinion that Mr. Stephen went to the cottage to the exclusion of Ms. Thomas; the relationship continued. I also do not find that the nature of the relationship changed until it came to an end in December 2018, when Mr. Stephen informed Ms. Thomas that he had another partner.

[172] I accept Ms. Thomas' evidence that the relationship came to an end in 2018 when Mr. Stephen moved out permanently in December 2018. Thus, the Court finds that the parties were in a common law relationship for some 28 years.

B. Whether there was a common intention that both parties should have a beneficial interest in the disputed properties? and

C. Did the Claimant act to her detriment based on this common intention?

[173] In arriving at a conclusion on this issue, the Court will have regard to the circumstances prior to the acquisition of the property, in particular, whether any discussions lead to an actual agreement, arrangement or understanding between the parties that the property is to be shared beneficially. If no evidence of this agreement exists, the Court may infer same from the conduct of the parties. The Court also notes Mr. Stephen's reliance on **Lloyds Bank PLC**, which recognizes that the Court may have regard to the discussions between the parties in exceptional circumstances at some date after acquisition.

[174] I will first deal with the Distillery and Dauphin properties, as my findings on same will have bearing on the award to be made in the Barnard Hill property.

The Distillery Property

[175] From the evidence, it is accepted that the Distillery property was jointly purchased by Mr. Stephen and his cousin, Cletus, in 2008. Ms. Thomas' position is that whilst Mr. Stephen paid his portion of the loan, there was a common understanding between them that she would take care of the house and children, whilst Mr. Stephen's funds were used for acquisition of the Distillery property. It was Mr. Stephen's intention to sell the property for a profit, of which Ms. Thomas would benefit by utilising the funds to build their family home and towards their retirement. Plans were drawn for the home to be built at Tivoli, with evidence that Ms. Thomas began preparing the property for building and storing materials. Her contribution to the acquisition of this property, was her obligation to pay numerous existing loans and providing food and grocery items for the household. It was because of these responsibilities that she could not go into the transaction with Mr. Stephen.

- [176] She also alleges that the parties put a shed on the Distillery property, where she stored coals bought by her, indicating that she did deal with the property with the consent and/or knowledge of Mr. Stephen. The letter from the St. Lucia Distillers Group of Companies stating that they met with both parties and Cletus George, also shows her involvement with the property at the time of its sale.
- [177] When the Distillery property was sold, Mr. Stephen gave Ms. Thomas \$20,000.00 towards the purchase of her vehicle. During cross examination, when Mr. Stephen was asked, "When you got the payment from St Lucia Distillers, you gave Priscilla \$20,000.00, he answered "I gave her an advance". This statement, to me, is an indication that more money was to come. Ms. Thomas alleged that the remainder was to build the house in Tivoli.
- [178] These actions of Ms. Thomas demonstrate to the Court that she did have some involvement with the Distillery property, and it was not a transaction done by Mr. Stephen to her exclusion. This finding is further supported by the relationship continuing until 2018, wherein it would be expected that the parties would continue to assist each other financially.
- [179] One may argue that if Mr. Stephen wished to have Ms. Thomas as part of the Distillery property investment, he would have put her name on the Deed. However, it is important to look at how the parties operated in past acquisitions, especially the property (Parcel 281) bought with Mr. Stephen's cousin, Nicholas Barnard. When that property was bought, the evidence is that they could not have bought it on their own and asked Nicholas to join them. The financing for the half of the purchase price was funded through a mortgage which was taken using the 279 Tivoli property as security. Therefore, it was no issue to have Ms. Thomas join in on that transaction.
- [180] The Distillery property was funded by a loan taken by Mr. Stephen and Cletus. Having accepted Ms. Thomas' evidence that the reason she did not join in that mortgage was because she had too many financial obligations at the time whereas

Mr. Stephen had finished paying off his loan obligations, it is clear that the Distillery property was meant to be an investment property and that it was not Mr. Stephen's investment to the exclusion of Ms. Thomas. On a balance of probabilities, I find that Ms. Thomas was therefore meant to have a beneficial interest in the Distillery property given the reason for its purchase: to be sold and the proceeds of sale used for their home and retirement. I therefore also find that when Mr. Stephen and Cletus sold the Distillery property, Ms. Thomas was entitled to half of the proceeds Mr. Stephen received.

[181] The evidence is that the Distillery property was sold for the sum of \$871,200.00. Half of that sum would be \$435,600.00 and Mr. Stephen and Ms. Thomas would be entitled to half that sum subject to the observations discussed below. The undisputed evidence is that certain sums were used for the benefit of Ms. Thomas and Mr. Stephen's family and to acquire two other properties which will be discussed later.

[182] It is not disputed that Ms. Thomas received \$20,000.00 towards the purchase of a vehicle, \$40,000.00 was put towards their daughter's education, \$25,000.00 was utilized by Mr. Stephen for the purchase of a vehicle, \$50,000.00 was used to purchase his brother's share in the Barnard Hill property and \$89,000.00 to acquire the Dauphin properties. Although in the pleadings, Mr. Stephen speaks about \$12,000.00 being given to Ms. Thomas towards her health expenses and Ms. Thomas saying that she was given that sum but as a loan which she repaid, this formed no part of their evidence in chief and was not interrogated in cross-examination. I will therefore not consider the \$12,000.00 in my analysis.

[183] As regards the Dauphin properties, Ms. Thomas' evidence was that he had spoken to her about the Dauphin properties and she had told him that she did not think it was a good idea primarily because the proceeds of the sale were to have been utilized for the construction of their home. This evidence makes it clear to the Court that there was never any common intention to purchase these properties and Mr. Stephen purchased them on his own without Ms. Thomas' involvement.

[184] Looking at the half share of the proceeds of sale in the sum of \$435,600.00, the following joint expenses must be deducted: (i) \$40,000.00 paid towards the daughter's tuition and (ii) vendor's tax on the full sale price in the sum of \$39,310.00. This leaves a total of \$356,290.00 which means that Mr. Stephen and Ms. Thomas would each be entitled to \$178,145.00. From Ms. Thomas' half, I deduct the \$20,000.00 which Mr. Stephen would have given her earlier from the proceeds of sale. Ms. Thomas is therefore entitled to \$158,145.00.

The Barnard Hill property

[185] Regarding the Barnard Hill property, I accept Ms. Thomas' evidence that she was the more financially sound partner in 1990, and was responsible for building the apartment structure at that time, with assistance from Mr. Stephen in securing the materials. I also accept that she built the retaining wall and slab in 1998. I accept her witnesses' evidence that they received instructions in relation to the construction of the apartment from Ms. Stephen, and she paid for their labour. On the contrary, Mr. Stephen's witnesses had no first-hand knowledge of who built the apartment in 1990 and the letter signed by Ricardo Leon only speaks to the building of the addition in 1993.

[186] I do not accept Mr. Stephen's evidence regarding the building of the apartment in 1990, as I find it to be self-serving and lacking evidential basis. His own witness, Prisca Steven, stated that the loan taken by him in the early 1990s, was to acquire land and not build the apartment as he claims. This is supported by Ms. Thomas' evidence as well. I also do not believe that Mr. Stephen gave Ms. Thomas an allowance as he testified since for most of the relationship, she was the higher income earner. There is no challenge to the evidence that Mr. Stephen built the addition to the apartment in 1993 to surprise Ms. Thomas.

[187] I do not accept Mr. Stephen's assertion that Ms. Thomas had to move out after she gave birth and his parents would use the apartment for rental income, especially as he made the addition to it in 1993; two years after their first child was born. Despite

this, in 1990, there was no agreement or arrangement that Ms. Thomas or Mr. Stephen would have a beneficial interest in the property. It was clear that the apartment was a temporary accommodation afforded to the parties', primarily by Mr. Stephen's mother, until the parties were able to build a home of their own. It was never the intention that Barnard Hill was to become their home. They were merely permitted to reside there until they could do better.

[188] Based on the evidence of Ms. Thomas herself, Ms. Prisca Steven and Mr. Gustave, I find on a balance of probabilities, that Ms. Thomas did help care for Mr. Stephen's mother and the children, with little assistance from Mr. Stephen financially or otherwise. Even so, these acts were based on Ms. Thomas' goodwill and relationship with Mr. Stephen's mother (which she admits), and her agreement to bear the responsibility for these household expenses, so that Mr. Stephen could make the loan payments for the other properties they acquired. The evidence does not provide any basis for a finding that there was a common intention between Mr. Stephen and Ms. Thomas that Ms. Thomas would have a beneficial share in the Barnard Hill property as the goal was always to build a home of their own on one of the parcels they had acquired jointly. There is no such common intention, either on the basis of agreement or conduct of the parties.

[189] Mr. Stephen acquired his brother Clyde's one-half share in 2018 and became the sole legal owner of the Barnard Hill property. It is not disputed that he paid Clyde \$50,000.00 which came from the proceeds of the Distillery property. According to Ms. Thomas, that \$50,000.00 did not include the value of the apartment which was their investment for improvement of the property. Ms. Thomas in her evidence states that she is 'not arguing about property donated to Mr. Stephen'.¹⁸ This is despite the relief which she seeks in her claim for a declaration that Mr. Stephen holds a half share in the Barnard Hill Property on trust for her.

[190] What is clear to the Court though, is that Ms. Thomas did make a significant financial contribution to the building of the apartment, its upkeep and maintenance, as well

¹⁸ Paragraph 16 of her first witness statement.

as the bills of the household and care for the children for those 28 years. She continued to reside at the apartment with the children after Mr. Stephen moved out in 2018. Her contributions allowed Mr. Stephen to take loans using the property as security, to purchase other parcels of land, and to make improvements to his parents' home. As such, it is only fair that Ms. Thomas be compensated for her contributions to the apartment.

[191] In his submissions Mr. Stephen indicates that Ms. Thomas would be entitled to 25% of the value of the apartment at most. Whilst the Court can see that Ms. Thomas made a significant contribution to the apartment, Mr. Stephen also contributed the extension and paid towards the materials together with Ms. Thomas. There is no evidence which would assist the Court in assessing the value of the contribution of either party. The Court therefore disagrees with Mr. Stephen's suggestion of 25% interest and is prepared to and finds that Ms. Thomas is entitled a 50% interest in the value of the apartment.

[192] Based on the valuation report of the jointly appointed valuation surveyor, Giselle Hull-Casimir, the value of the apartment and patio only located at the Barnard Hill property was at \$107,000.00 as at 3rd May 2021. Therefore, Ms. Thomas is entitled to the sum of \$53,500.00.

Conclusion

[193] In conclusion, I find that Ms. Thomas has shown on a balance of probabilities that there was a common intention between the parties based on how they conducted their affairs that she was entitled to a beneficial interest in the Distillery property and consequently, entitled to a half share of the proceeds of the sale of that property. In relation to the Barnard Hill property, I find that there was no common intention that Ms. Thomas would have a beneficial interest in that property. I however find that Ms. Thomas would have a beneficial interest in the value of the apartment based on her financial contributions to its construction and is entitled to be compensated. I do not find that there was any common intention that Ms. Thomas would have any interest in the Dauphin properties and these properties belong to Mr. Stephen solely.

[194] There is no need to make any declarations in relation to any of the other properties which initially formed part of the relief sought in the claim at paragraph (vii) as all of these properties are jointly owned by Ms. Thomas and Mr. Stephen and there is therefore no dispute as to their ownership and the parties accepted and conceded this.

Disposition and Order

[195] In light of the foregoing discussion, I make the following Orders:

1. The claimant is entitled to a half share interest in the value of the apartment constructed at the Barnard Hill property registered as Block and Parcel 0849B 442.
2. The defendant shall pay the claimant the sum of **\$53,500.00** representing half share of the value of the apartment.
3. Upon payment of the sum of \$53,500.00 to the claimant, the claimant shall deliver vacant possession of the apartment and premises to the defendant.
4. The defendant shall pay to the claimant the sum of **\$158,145.00** representing her share of the proceeds of sale of the Distillery property (Block and Parcel 0442B 178).
5. The defendant is declared to be the sole owner of the Dauphin properties registered as Block and Parcel Nos. 1445B 6 and 7.
6. The defendant, whether by his servants or agents is hereby restrained from (i) entering the apartment located at the Barnard Hill property until he has paid to the claimant the sum stated at paragraph 2 above and (ii) from harassing or pestering the claimant.
7. The injunction continued on 20th January 2020 and varied by Order dated 26th February 2021 is hereby discharged.
8. In relation to costs, the claimant having only been partially successful on her claim is entitled to half of the prescribed costs on the full award of \$211,645.00, which is \$31,455.63. The defendant shall therefore pay the claimant costs in the sum of **\$15,727.81**.

[196] I sincerely apologise to Counsel and the parties for the delay in delivering this decision and for any inconvenience caused which is deeply regretted.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar