

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

Claim No: ANUHCv2021/0335

BETWEEN:

MIRIAM GIBBONS

Claimant

and

DESNIE CHARLES

Defendant

Appearances:

Mr. Septimus Rhudd of counsel for the Claimant

Mr. Lawrence Daniels of counsel for the Defendant

2025: May 26th ;
August 1st .

JUDGMENT

- [1] **DRYSDALE, J.:** At the heart of this legal dispute is the issue of matrimonial property and the corresponding entitlements of the parties involved.

The Pleadings

Statement of Claim

- [2] The Claimant and the Defendant met in or around 1997 and cohabitated for 13 years prior to becoming husband and wife on 9th June 2011. Their marriage lasted 8 years and concluded in divorce in 2019.

- [3] The Claimant alleges that around June 2007, while cohabiting with the Defendant, she hired G-90 Building Systems Ltd, a construction company, to provide a quote for a Gables Model, 3-bedroom, 2-bathroom steel frame house. The estimate from the company totalled \$295,000.00, which included the cost of both land purchase and home construction.
- [4] In June 2007, the Claimant secured a \$260,000.00 loan in her name from the Bank of Nova Scotia. This loan, intended for the purchase of land and construction of their home, had monthly repayments of \$1,350.00. Subsequently the Claimant purchased the land in 2008 and the same is registered in her name.
- [5] In 2008, the Claimant completed the construction of a house she had purchased partially built, entirely financing its construction. The couple then moved into the completed residence, establishing it as their matrimonial home. Despite this, the Claimant alone continued to be responsible for all mortgage payments, directly debited from her Bank of Nova Scotia account, without any contribution or request for contribution from the Defendant.
- [6] Beyond the mortgage, she also exclusively managed the home's maintenance, upkeep, and property tax payments. The Claimant acknowledges that the Defendant would, at times, pay some household bills such as electricity, water, and cable. She further contends that she largely furnished the home, only crediting the Defendant with the purchase of the refrigerator, stove, and washing machine.
- [7] On November 9, 2017, a decade later, they jointly secured a \$210,000.00 personal credit agreement for home repairs, leading to an increase in their monthly mortgage payment to \$1,437.61.
- [8] Following their divorce, the Claimant has continued to solely pay the mortgage on the property where the Defendant resides. An oral agreement was made in

November 2019, allowing the Defendant to stay for one year to sort out his affairs. Yet, even after this year passed and despite multiple requests, the Defendant has not moved out and is now asserting an interest in the property.

- [9] Therefore, the Claimant claimed inter alia a determination of the respective interests of the parties and that the Defendant vacate the matrimonial home.

The Defence and Counterclaim

The Defence

- [10] While the Defendant disputes the initial meeting and relationship start dates, he asserts that cohabitation began in 1998, coinciding with the launch of his supermarket business. He claims that in 2004, they discussed building a home, and by 2007, after viewing an incomplete steel frame property in Paynters, they agreed to jointly contribute to the mortgage. Initially, the Claimant, due to her stable employment, was to seek a 20-year loan from RBTT, but this proved unsuccessful. They then agreed the Claimant would apply for a 30-year mortgage with the Bank of Nova Scotia, with the Defendant contributing half of the monthly payments. He avers the Claimant informed him the repayment was \$1,900.00 per month, and he consistently gave her \$1,000.00 in cash monthly, as payments were deducted directly from her account. The Defendant also contends that he gave the Claimant the sum of \$19,000.00 towards the deposit for the house and the sum of \$7,000 for insurance.
- [11] Beyond financial contributions, the Defendant asserts he was actively involved in the construction and upkeep of the home, personally hanging doors, painting, and performing other physical labour. He also states he consistently covered household expenses, the Claimant's daughter's school fees, house maintenance, and all utilities. Furthermore, the Defendant claims responsibility for purchasing major appliances (stove, refrigerator, washing machine, two air

conditioning units) and various smaller ones, as well as clearing all ordered furniture and appliances for the residence.

- [12] The Defendant denies the existence of any agreement permitting him to live in the home one year post divorce and contends that he has a 50% beneficial interest in the property.

The Counterclaim

- [13] The Defendant's counterclaim is captured in one line wherein he asserts that he is entitled to 50% beneficial interest in the matrimonial home.

The Reply and Defence to Counterclaim

- [14] The Claimant refutes the Defendant's timeline, affirming her stated dates for meeting and cohabitation. She denies any joint discussions about building a house in 2004 or an agreement for the Defendant to contribute to the mortgage, despite visiting the Paynters property in 2007. The Claimant also refutes that the Defendant did not likewise have stable employment, stating that the defendant was self-employed as a grocer as well as selling imported drinks from St. Martin.
- [15] The Claimant denies that her RBTT loan application was not unsuccessful, and instead asserts that the loan was approved but for an insufficient sum for the property's purchase and construction. She denies discussing a \$1,900 mortgage payment or the Defendant's contribution, stating her decision to approach the Bank of Nova Scotia was entirely her own. Furthermore, the Claimant asserts there was no agreement for the Defendant to contribute to the mortgage or gain any beneficial interest in the property and denies any contribution of the Defendant as alleged towards the mortgage.
- [16] The Claimant denies the Defendant made any contributions to the property, whether monetary or through work performed. She states the house was

financed entirely by the Bank of Nova Scotia loan and that G-90 Building Systems Limited built the entire house. The Claimant also disputes receiving \$26,000 from the Defendant, stating that the Defendant gave her \$17,000.00 for legal fees to transfer the property into her name.

[17] While admitting the Defendant paid her daughter's school fees for three terms, the Claimant clarifies this was not at her instigation. She disputes the claim that the Defendant covered all utility bills, stating his contributions were infrequent and only for some of the bills.

[18] Regarding appliances, the Claimant counters that the Defendant's purchases were limited to the stove, refrigerator, and washing machine, refuting his claim of acquiring multiple small appliances. She also states the Defendant only bought one air conditioning unit, which served as a replacement for a faulty one she originally purchased.

[19] The Claimant maintains that after their divorce, they agreed the Defendant could remain on the property for one year, an agreement he has since breached by not vacating. She categorically denies his entitlement to a 50% interest in the property.

Defence to Counterclaim

[20] The Claimant reiterated her sole ownership of the property, citing its purchase in her name alone and her exclusive responsibility for the financing loan. She also denied any discussions with the Defendant, or expectations, regarding his beneficial interest in the property.

Evidence

[21] Both parties submitted witness statements and were cross-examined on them. Since these statements closely mirrored their initial legal arguments, only the most pertinent information will be detailed below to avoid repetition.

The Claimant

- [22] The Claimant, who previously worked as a Supervisor at Pastry's Limited confirmed that she is now employed as a Supervisory of Fine Jewellery at J.C. Penney. During cross-examination, she stated she came to Antigua in 1994 and began an intimate relationship with the Defendant in 1998. She confirmed that she owned no property in Antigua at that time.
- [23] The Claimant affirmed having a daughter, whom she brought to Antigua, and that the three of them began living together as a family. The Claimant confirmed marrying the Defendant and having a joint account at Bank of Nova Scotia, though she could not recall the specific account number but remembered her cell number.
- [24] She denied being aware of building materials being purchased from FADI's Building Supply North Coast Hardware or Antigua Plumbing and Hardware. She revealed that the parties each contributed \$200.00 to an account for building but denied that any purchases for building supplies were made from it.
- [25] The Claimant agreed that she obtained a loan from Scotia Bank but denied the Defendant provided the deposit or insurance amount for it. She also denied that the Defendant gave her any money monthly for the mortgage, although she clarified he did give her money at other times.
- [26] The Claimant confirmed that the loan was re-mortgaged for \$210,000.00 with both her and the Defendant signing the agreement. She also verified her use of internet banking to monitor her loan account. While acknowledging a \$750.00 standing order, she clarified it has only been consistently paid since January

2025. She specifically denied that money was previously given directly to her for the mortgage and then deposited into the account after she stopped receiving it.

[27] The Claimant agreed that she and the Defendant lived together before and after the house was built, but she denied moving out of the house after their divorce. She clarified she has been living in the United States for three years and has not occupied the house during that time.

[28] She acknowledged a letter from her attorney and a letter referring to the "matrimonial home." She stated that having arrived in Antigua without property, and after commencing cohabitation with the Defendant, he encouraged her to get the loan in her name alone with his assistance.

[29] She denied the Defendant bought her a Honda CRV, stating she got the car herself. She confirmed the original mortgage payment was \$1,400.00 and that her monthly salary was \$6,000.00 which she asserted was reflected in her bank account, though she did not provide a payslip or employment letter as an exhibit.

[30] She confirmed her child attended a private school with due fees. The Claimant denied the Defendant paid the mortgage while she was on holiday in America. She confirmed the bank has not issued a foreclosure notice in the last three years while she's been in America and agreed the Defendant has continued making monthly contributions to the utility bills.

[31] She denied that all furnishings were purchased half and half, asserting she bought some items like the dressers and nightstands and the Defendant purchased others. She clarified that the Defendant's name appearing on some receipts was for shipping purposes only but that she paid for the furnishings.

[32] The Claimant refuted the idea that the Defendant consistently handled house repairs. She stated he only repainted the house once and never fixed doors. She

also denied his involvement in the house's extension, clarifying that he did not do the work, although she didn't assert he contributed absolutely nothing. Furthermore, she denied he replaced any bathroom faucets.

[33] The Claimant steadfastly denied holding the legal title on trust for both of them in equal shares. She confirmed knowing the Defendant was working since she knew him, but denied he invested his gratuity from being laid off into the house. She maintained her evidence that she entirely owns the house despite their marital cohabitation and continued to deny they own the house in equal shares.

[34] The court questioned the Claimant about a \$260,000.00 loan she received, noting the house cost \$295,000.00. When asked about the \$35,000.00 deficit, the Claimant stated it came from her, admitting she had not previously indicated this in her evidence. She agreed this information would have been important to tell the court earlier.

[35] Separately, the Claimant confirmed she left Epicurean in November 2022, started working at JC Penny in November 2023, and left Antigua at the end of November 2022.

The Defendant

[36] The Defendant affirmed his witness statement, stating its contents were and remain true and correct. During cross-examination, he identified his current occupation as a tour operator and confirmed holding both checking and savings accounts at ECAB, having previously banked at Bank of Nova Scotia and Antigua and Barbuda Investment Bank, though he could not recall when he moved accounts.

[37] He stated he has lived in Paynters since November 2008, and before that in Fort Road, and Renfrew. He recalled meeting the Claimant in 1998, though his witness statement indicated 1996, clarifying he was living across from her on

Branch Avenue at the time, which he later identified as a typo in his witness statement when he stated she lived in Point area, despite having read and signed the statement. He confirmed moving in with her when their relationship began and living together at Fort Road after Hurricane Luis.

[38] He stated the Claimant worked at Epicurean while he was a technician at Benji Business Center. He recalled being laid off from Benji's in 1999 and receiving severance monthly by cheque that same year, deposited into his bank account, though he provided no evidence of this payment or bank statements. He admitted the Claimant put him out of the house but they reconciled.

[39] He explained that discussions about acquiring property began before 2004, when he encouraged her to move from shared accommodation and later get a property together. He stated he encouraged her to get a loan in her name from RBTT (which was denied) and then from Scotia, with the understanding they would later change the property's registration. He affirmed the property was transferred solely to the Claimant and explained his name was not added at the time because it was agreed it would happen later, and they were planning to get married, considering it "our house" as a family.

[40] He conceded he didn't push for his name to be registered, even when the loan was refinanced in 2017 for an extension. He acknowledged that he was working for himself at the time and the bank did not request documentation from him then. He admitted he was asked to sign as a co-borrower in 2017 because they were married.

[41] He denied that his current understanding of the Claimant lying about the premium during the loan application suggested she didn't want him as part of the process, maintaining he trusted her. He claimed he started making monthly payments of \$1,000.00 for the first five years, reducing to \$750.00 after 2022 when he co-signed the loan, but produced only one receipt for \$750.00. He

agreed that no bank statements or cancelled cheques to support his asserted contributions were provided to the Court.

- [42] He acknowledged a letter dated June 1, 2021, requesting documentary evidence of his financial contributions, to which he has not responded. He acknowledges that the letter referred to him as ceased making payments since 2017. However he asserted paying \$1,000.00 monthly for the first five years, with the Claimant paying \$900.00. He maintained he contributed \$21,000.00 towards the deposit for the initial loan and \$7,000 for the insurance amount, but admitted he has no evidence for these payments and that they were not mentioned in other documents. He acknowledged first mentioning these payments in his witness statement.
- [43] He agreed that they divorced in 2019 and asserted that he has continued making payments since then via standing order, but has no receipts or records for these.
- [44] He confirmed his awareness of the legal action starting in 2021 and that he has not provided his lawyer with these records. He stated he took steps to secure his interest by consulting a lawyer. He admitted that it struck him as strange that his name wasn't on the title about five years after the property was purchased.
- [45] He also confirmed purchasing a property in Potters during a two-year break in their relationship (1999-2002), and that he did not add the Claimant's name because he intended to give that property away to someone else, not the Claimant, and it remains in his name.
- [46] He maintained that despite the lack of documentation, it was intended that he would be a co-owner, and she did make efforts to add his name, but it was agreed to do it later.

- [47] He disputed the Claimant's assertion that G-90 Building Systems provided a completed house, stating he had to purchase and replace doors from St. Martin because the ones provided were not solid enough, claiming the Claimant has the receipts as she controlled everything.
- [48] He maintained his asserted contributions despite the lack of documentation and denied having any issues with the Claimant's documents, stating they were "our documents." He stated the joint account statements are unavailable because the bank closed, asserting the Claimant would have those records.
- [49] He confirmed having no paperwork or bank statements to show his income for the years he claimed to be spending money. He denied the Claimant's intention was to be the sole owner from day one and denied she made no efforts to add his name. He disagreed with the suggestion that his name was not added on the second loan because it was never intended for him to be a co-owner.

Issues

- [50] The issues to be resolved are as follows:
- i. Whether the Defendant is entitled to a beneficial interest in the property?
 - ii. If yes the extent of the Defendant's beneficial interest?

Discussion and Disposition

Whether the Defendant is entitled to a beneficial interest in the property?

- [51] In Antigua and Barbuda, the Registered Land Act, Cap. 374 (the Act), governs all matters pertaining to land title. Central to this Act is Section 23, which articulates the formidable strength of absolute title. This provision states that the act of registering a person as the proprietor with absolute title effectively grants that individual complete and indefeasible ownership of the land parcel, along with all attached rights and privileges. This means that such ownership is unburdened by any other interests or claims save those interests provided for in the Act,

providing a high degree of certainty for the registered owner. The statutory exceptions include any existing interests that are clearly recorded on the land register, such as leases, charges, or specific conditions and restrictions and certain unnoted interests, rights, and liabilities which are specifically exempted from the registration requirement by Section 28 of the Act, unless their non-existence is explicitly stated in the register.¹

[52] The Claimant is, without question, the sole registered owner of the property having financed its acquisition through a loan for which she bore exclusive responsibility as the borrower. Legally, joint beneficial ownership is not presumed when title is held by one party alone, a principle confirmed in cases like **Jones v Kernott**². Given this, the burden of proof for establishing an equitable interest in property, where the legal title is held solely by another, falls entirely on the party making the equitable claim. This position was decisively reinforced by **Stack v Dowden**³ wherein Baroness Hale of Richmond stated “[t]he onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all.”

[53] Therefore Defendant must produce compelling and cogent evidence to establish the existence of a trust. This specifically means demonstrating either direct financial contributions to the property's purchase or a shared intention, whether explicitly agreed upon or implied by conduct. The latter point is reinforced by the case of **Jones v. Kernott**⁴ where it found that, common intention need not be

¹ Registered Land Act section 23. "Subject to the provisions of section 27 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject

a) To the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the register; and b) Unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register."

² "Where the property is registered in the sole name of one party, there is no presumption of joint beneficial ownership."

³ [2007] 2 All E R 292

⁴ [2011] UKSC 53

formal or written but may be deduced from consistent behaviour or arrangements showing mutual understanding that both parties had a stake in the property. It is important to note that direct financial contributions may give rise to a shared common intention. However the onus is still on the Defendant to provide sufficient proof to overcome the fundamental principle of indefeasibility of registered title and convince the court that equitable considerations necessitate a departure from the legal ownership shown on the register.

[54] While the parties dispute the precise purpose of the Defendant's initial financial contribution, it is undeniably clear that the Defendant transferred a not insignificant sum of money to the Claimant during the loan acquisition process. The Claimant maintains that she received \$17,000.00 specifically for the payment of legal fees related to the mortgage. In contrast, the Defendant asserts a higher sum of \$28,000.00, contending this amount comprised \$21,000.00 for the property's deposit and an additional \$7,000.00 for insurance. The core agreement remains that a substantial amount of money changed hands, with the disagreement centering on whether this represented a capital investment in the property or merely a gift. This pivotal sum, regardless of its exact amount or purpose, forms a central element in assessing the nature of their financial relationship concerning the property. The divergent accounts require careful scrutiny to determine the true intent behind the transfer.

[55] At the time the mortgage was secured solely in the Claimant's name, the parties were in a deeply committed relationship. Having resumed cohabitation after only a brief period of fracture, they were essentially living as de facto husband and wife. Indeed, their consistent cohabitation had spanned a period exceeding eight years, clearly suggesting a serious and established relationship with a significant level of interdependence and shared life. As an additional demonstration of this shared life, the Defendant occasionally paid for the Claimant's daughter's school fees, even though this particular contribution is not directly relevant to the issue of a beneficial interest in the property for these proceedings.

- [56] Despite the Claimant's repeated denials about the Defendant's involvement in the property's acquisition and payments, and her assertion that there was no common intention to share ownership, the Court finds her testimony on this crucial point to be lacking in credibility. This assessment stems directly from her own admission during cross-examination which contradicted her earlier statements by admitting that the Defendant did make payments toward the mortgage. This admission stands in stark contrast to her written evidence, where she completely denied the Defendant's involvement or any material contribution to the mortgage or household expenses. The Court therefore views her initial denials with considerable doubt, given her subsequent acknowledgment under oath.
- [57] Further the extensive duration and profound nature of their cohabitation, culminating in marriage, indicate a mutual understanding to share their lives and assets. More importantly the Court accepts the Defendant's testimony that they discussed their shared goal of building a matrimonial home and their joint decision for the Claimant to approach the bank. The practical arrangement for the Claimant to secure the loan in her name alone, given her stable employment versus his self-employment, was predicated on the explicit understanding that the Defendant would provide assistance with mortgage repayments, as the property was fundamentally intended to be a joint matrimonial asset. This mutual understanding directly informed the Defendant's financial contribution, whether it was allocated to the deposit and insurance fees or towards the legal fees. This financial input, acknowledged and accepted by the Claimant, constitutes a direct and material contribution that was indispensable to the property's mortgage and acquisition. It is this substantive and undeniable contribution, reflecting the underlying agreement between the parties, that solidifies the Defendant's vested interest, rendering the precise categorisation of the funds a distinction without a material difference in the eyes of equity. This course of conduct and understanding points to an inferred common intention, contrary to the Claimant's denials.

[58] Having established a common intention regarding beneficial ownership, the Court now turns to the critical task of quantifying the Defendant's equitable interest in the property. The authoritative guidance from **Oxley v Hiscock**⁵ is directly applicable here, where it was stated:

"...the second question to be answered in cases of this nature is 'what is the extent of the parties' respective beneficial interests in the property?' Again, in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have – and even in a case where the evidence is that there was no discussion on that point – the question still requires an answer. It must now be accepted that (at least in this Court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. **And, in that context, 'the whole course of dealing between them in relation to the property' includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home.**" (emphasis mine)

[59] This crucial legal principle dictates that even if there was no explicit agreement on precise shares, the Court must determine a fair division by considering every aspect of the parties' financial and practical arrangements concerning the property. This extends beyond initial purchase contributions to include ongoing responsibilities for all household outgoings, acknowledging that all forms of contribution to maintaining the home are relevant to assessing beneficial shares.

⁵ [2004] EWCA 546

[60] The Defendant posits that his financial contributions extended significantly beyond the initial deposit and insurance. He claims to have made direct monthly payments of \$1,000.00 towards the mortgage for the first five years, a figure he states decreased following the mortgage's refinancing. Furthermore, he contends he contributed an additional unspecified sums monthly to household expenses. The Claimant, however, presents a sharply divergent narrative. She disputes these assertions entirely, alleging that the Defendant's contributions were inconsistent, limited to occasional payments for utilities. Her position is that she personally shouldered the entire burden of the mortgage, which was paid via salary deductions, alongside all other substantial household expenditures and taxes. The Court must therefore reconcile these conflicting accounts of financial responsibility during their cohabitation.

[61] The Defendant's assertion that his contributions were made exclusively in cash presents a significant evidentiary challenge, as it means there is no verifiable documentation to support his claims. While the Defendant did exhibit a single receipt for \$750.00, its probative value is severely limited by its date being December 27, 2022. This date places the payment a full 18 months after the initiation of these proceedings and, critically, substantially later than the 2017 cut-off date for mortgage contributions as pleaded by the Defendant himself. Nonetheless, the Court acknowledges the conceivable possibility that such informal payments may indeed have occurred, particularly given the inherent element of trust often prevalent in long-term personal relationships, where rigorous formal documentation might not have been deemed necessary by the parties at the time.

[62] In examining the broader context, the Court notes a significant evidentiary gap as neither party has provided proof of their respective earnings at the time of the property's acquisition. This omission is crucial, as the Court is entitled to consider the financial circumstances of both parties, even where the property's legal title was initially secured solely in the Claimant's name. This principle, as reinforced

by Lord Justice Chadwick in **Oxley v Hiscock**, allows the court to have "regard to the whole course of dealing between them in relation to the property." Specifically, if the Claimant lacked the independent financial resources at the material time to acquire the property alone, such a finding may reasonably support an inference that the Defendant's contributions were necessary and indeed occurred, thereby bolstering his claim of financial involvement.

[63] The Claimant acquired the property in 2008 through a loan agreement with the Bank of Nova Scotia. This acquisition followed an earlier attempt in 2004 to secure a twenty-year loan from Republic Bank of Trinidad and Tobago (RBTT), which was denied. Subsequently, the Claimant approached the Bank of Nova Scotia for a mortgage, aiming to acquire a property and build a home, requesting \$295,000.00. However, she was only approved for \$260,000.00, a sum clearly insufficient for the intended construction.

[64] The Claimant contends she bore sole financial responsibility for this mortgage and effortlessly managed it, alongside other household expenses and the maintenance of a motor vehicle (specifically a Honda CRV), all due to her salary. Yet, her lack of evidence concerning this salary at the time of acquisition is particularly concerning. It seems notably strange that the Claimant, who was employed at Epicurean (her employer until these proceedings began), could not produce a job letter, or any documentation verifying her employment and, more importantly, her salary at the time the mortgage was secured.

[65] Adding to the Court's skepticism is the unexplained initial loan shortfall, a matter the Claimant only addressed when directly questioned by the Court. Her subsequent assertion that she personally covered this deficit is met with considerable doubt by the Court. Considering the Claimant's evident attention to detail, as demonstrated by her production of numerous receipts for credit facilities from as far back as 2008, it is highly implausible that evidence or a clear explanation for such a substantial payment could have been merely overlooked.

This implausibility is further underscored by her witness statement (paragraph 7), which asserts the house's construction was "solely from the proceeds of the loan obtained from the Bank of Nova Scotia," despite the obvious discrepancy between the loan amount and the actual construction cost. The more compelling conclusion is that the Claimant simply did not possess the independent financial capacity to afford that sum. When viewed alongside the absence of any verifiable documentation for her salary during that material period, this strongly supports the contention that she was receiving necessary financial assistance from the Defendant to enable her to meet her ongoing monthly obligations.

[66] Despite this, the Court is not prepared to simply accept the Defendant's claim that he specifically contributed \$1,000.00 to the mortgage and further sums to the payment of the utilities. It is accepted that the Defendant was largely self-employed during the relationship. Therefore, it is understood that he would not typically possess traditional salary slips as proof of income. However, the Defendant claims to have been a successful businessman earning \$10,000.00 per month. Given that he was not only defending this claim but also actively pursuing a counterclaim, it would be expected that some form of income verification would have been submitted. Yet, the Defendant has failed to provide any evidence of his financial standing, such as bank records, or tax returns. Thus the Court interprets the Defendant's singular \$750.00 payment, made after the commencement of these legal proceedings, as consistent with what he typically contributed. This amount, it seems, reflects his usual financial contribution toward the mortgage and other household expenses, explaining why he specifically provided that sum.

[67] According to the Defendant's own pleaded case, the Claimant resumed making all mortgage payments independently from 2017 onwards. The significant implication of this is that the Defendant's absolute halt in contributions directly contradicts any claim of a continued equitable co-ownership. Such a complete

cessation of payments clearly shows a break between his behaviour and any alleged beneficial interest he holds in the property. Although the Defendant continued the payments for utilities and engaged in maintenance activities like lawn care, and periodic contributions to upkeep, in this circumstance these activities do not automatically establish a resumption or continuation of beneficial interest in the property. The Defendant was admittedly residing in the home with the Claimant. When sharing a living space, it is standard for occupants to contribute to the expenses that keep the household functioning. Covering costs like electricity, water, internet, or routine property care directly benefits the person living there by ensuring their comfort and usability of the home. They represent contributions to the home's operation, not necessarily its ownership. For these contributions to genuinely suggest a beneficial interest, one would typically require clearer evidence or specific agreements demonstrating an explicit intention for these funds or efforts to contribute to the property's value, beyond simply sharing the costs of habitation. The combination of his cessation of mortgage payments, the divorce, the Claimant's subsequent sole responsibility for all mortgage installments even from the U.S. while the Defendant occupied the property, and the absence of evidence that the Defendant's other contributions were meant to enhance the property's value, conclusively demonstrates the Defendant holds no ongoing beneficial interest post-2016. Consequently, any prior beneficial interest is limited solely to the 2008-2016 period, ceasing with his mortgage contributions.

Disposition

- [68] The evidence unequivocally shows that the Defendant has met the required burden of proof to establish an equitable interest in the property. However, the Court does not find sufficient basis to conclude that this interest constitutes a 50% beneficial share. This is primarily due to the finding that the Defendant's financial contributions spanned a period of only eight years.
- [69] Calculations reveal that the Defendant's monthly contribution of \$750.00 over eight years totals \$72,000.00. When combined with the \$28,000.00 allocated for

the deposit and insurance, his total documented payment amounts to \$100,000.00.

[70] Comparing this sum to the overall mortgage cost of \$767,358.40⁶ over a 30-year term, the Defendant's initial beneficial interest is calculated at 13%. This figure is subsequently reduced by the Court to 7% to reflect the fact that the Defendant continued to occupy the property after 2016 without making any further mortgage contributions.

[71] Given that the Court has determined the Defendant holds an interest in the property, a valuation of the property is now necessary to accurately quantify the Defendant's specific share.

ORDER

[72] In light of the foregoing, it is hereby ordered as follows:

- a. The Defendant is declared to hold a 7% beneficial owner of the property registered as West Central , Block and Parcel 11 2291B 5
- b. An independent valuation of the property shall be conducted by a qualified and mutually agreed valuer or failing agreement by a valuer appointed by the court within 60 days from the date of this order.
- c. Upon receipt of the valuation report the Claimant shall pay to the Defendant a sum equivalent of 7% of the market value of the property as determined by the calculation within 60 days of the date of receipt of the valuation report.
- d. The costs of the valuation report shall be borne equally between the parties.

⁶ This represents the mortgage of \$260,000.00 with an interest rate of 9% over 30 years

e. The Defendant shall vacate the property within 30 days from the date of the payment of his interest in the property.

f. Each party shall bear their own costs.

Jan Drysdale

High Court Judge

By The Court

Registrar

