

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2019/0278

BETWEEN:

VIVIANA BRICE

Claimant

And

BARRY POLIUS

Defendant



APPEARANCES:

Mr Andie George and Ms Sherene Francis for the Claimant
Ms Shahida Charlemagne for the Defendant

2021: April 20;
May 4 – closing submission;
2025: March 17

JUDGMENT

Introduction/Nature of Proceedings

[1] **PHILLIP, J:** The claimant, Viviana Brice, is a Social Worker of Goodlands in Castries and the defendant, Barry Polius is a Driving School Instructor of Ti Colon in Castries. From 2006 to July 2018, the parties were in an on-and-off common-law relationship that produced two sons. They shared an apartment at Goodlands aforesaid and acquired certain properties including two motor vehicles, the subject matter of this claim. Sadly, the claimant now asks this court for redress for the breach of an alleged agreement they had during the relationship. She claims as follows:

- “(a) An Order that the parties sign a change of ownership for the Toyota Corolla Wagon, registration number PK4261 to give effect to the Defendant being the sole owner of the said vehicle, and that the Defendant pays the Claimant half the value of the said motor vehicle;
- (b) An Order that the parties sign a change of ownership for the Suzuki Swift registration number PJ2727 to give effect to the Defendant being the sole owner thereof, and that the Claimant be paid half the value of the said vehicle;

- (c) Alternatively, an order that the Defendant keeps the two motor vehicles and the half share entitlement of the Claimant and that the Defendant be ordered to pay the cost of the purchase of the Claimant's new motor vehicle in the sum of \$45,770.00;
- (d) An order that the Defendant pays the balance of the vehicle loan Number 422154 at 1st National Bank in the sum of \$6,450.00;
- (e) Special Damages in the sum of **\$13,562.55**, comprising:
 - i. Loss of use of Toyota Corolla bearing registration number PK4261 at the sum of \$150.00 per day from the 19th April, 2019 to the 30th April, 2019 - **\$1,650.00**;
 - ii. Rental fees in the sum of \$3,000.00 for rental of a vehicle for the months of May and June, 2019;
 - iii. Salary deductions towards payment on Vehicle Loan Number 422154 at 1st National Bank - **\$8,400.00** (and continuing); and
 - iv. Insurance Coverage for Toyota Corolla bearing registration number PK4261 - **\$512.55**.
- (f) Aggravated Damages;
- (g) General Damages for breach of agreement and inconvenience;
- (h) Interest on damages pursuant to Article 1009A of the Civil Code of Saint Lucia;
- (i) Costs herein, and
- (j) Such further and/ or other relief which the Court deems fit in the circumstances."

[2] The defendant disputes the claim and counterclaims for the following orders:

- "i) A Declaration that the Defendant is the legal and beneficial owner of the 1998 Toyota Corolla Wagon bearing the License Plate Registration Number PK4261.
- ii) A Declaration that the Defendant is the legal and beneficial owner of the 2008 Suzuki Swift bearing the License Plate Registration Number PJ2727.
- iii) An order that the Claimant sign a change of ownership for the Toyota Corolla Wagon to the Defendant, thereby making the Defendant the sole registered owner of the 1998 Toyota Corolla Wagon bearing the License Plate Registration Number PK4261.
- iv) An order that the Claimant sign a change of ownership for the 2008 Suzuki Swift bearing the License Plate Registration Number PJ2727, thereby making the Defendant the sole registered owner of the said vehicle.
- v) An order that the sum of \$3,492.55 owed to the Claimant by the Defendant be off-set against the sum of \$5,000.00 owed by the Claimant to the Defendant and that the Claimant pay to the Defendant the total sum of \$1,507.45, in full and final settlement of the total debt due.
- vi) Interest at the statutory rate of 6%.
- vii) Costs.
- viii) Any other relief that the Courts deem just and fit."

[3] There is common ground between the parties on the following admitted facts in their pleadings so far as relevant to the case:

1. The parties are and were at all material times when the cause of action arose the joint registered owners of motor vehicles (i) 1998 Toyota Corolla wagon, licence number PK4261, chassis number AEI 000 282 096, and engine number 5A4 1691500 ("the

wagon"); and (ii) 2008 Suzuki swift, licence number PJ2727, chassis number ZC715-432700, and engine number KB12 ("the swift").¹

2. During 2006 - 2014, the claimant and the defendant shared a common-law relationship, wherein the claimant gave birth to two children of whom the defendant is the father.²
3. In 2013, the claimant obtained a loan facility with the Bank of Nova Scotia in her sole name to purchase the wagon, as the defendant could not qualify for a loan from a financial institution.³
4. In or about December 2014, the claimant signed a change of ownership of the wagon in the defendant's favour on condition that the defendant continued to make the monthly loan payment of \$600.00 to the Bank of Nova Scotia, to which the defendant agreed. The defendant continued to pay the loan at \$600.00 monthly by salary deduction.⁴
5. In or about 2015 or 2016, the parties rekindled their relationship and resumed living together.⁵
6. After the loan for the wagon would have been paid in full, the defendant continued to allow the salary deduction of \$600.00 monthly to be deposited into the claimant's account.⁶
7. In or about 2017, the defendant paid the purchase price for the swift ordered from Japan. However, upon arrival of the swift at Port Castries, the defendant had insufficient funds to clear the vehicle from the port. As a result, the parties agreed, and the claimant took a loan of \$15,480.00 from the 1st National Bank St. Lucia Limited ("the 1st National Bank loan") to pay the customs duties and insurance.⁷
8. In or about July 2018, when the parties again ended their common-law relationship and separated, the wagon remained in the possession and control of the claimant, who acquired third-party insurance coverage for the wagon with Massy United Insurance Agents for \$512.55 for 2019.⁸

¹ See paras 1 & 2 of the statement of claim (SOC), 3 of defence and counterclaim (DCC), and 2 of reply to defence and counterclaim (RDCC)

² See paras 3 of SOC and 5 of DCC

³ See paras 4 & 5 of SOC and 6 & 7 of DCC

⁴ See paras 7 of SOC, 7 & 9 of DCC and 6 b & 8 RDCC

⁵ See paras 8 of SOC and 10 of DCC

⁶ See paras 9 of SOC and 11.1 of DCC

⁷ See paras 10 & 11 of SOC and 12 & 13 of DCC

⁸ See paras 13 & 14 of SOC and 15.1, 15.6 & 16 of DCC

9. In or about March 2019, the defendant stopped the monthly salary deduction of \$600.00 deposited into the claimant's account and took possession of the wagon on or about 19th April 2019.⁹
10. The defendant may be liable to the claimant, if any, for \$3,492.55, which comprises \$512.55 for the insurance coverage for the wagon and \$2,980.06, which represents the balance the defendant owes to 1st National Bank for the swift.¹⁰

Claimant's Case

- [4] The claimant contends that she is entitled to at least a half share in the wagon and the swift, as she has borne most of the financial responsibility for repaying the associated loans. Further, the fact of registration is that she is a joint owner of both vehicles. However, by his action, the defendant has neglected or refused to acknowledge her interest and has deprived her of the peaceful use and enjoyment thereof, as well as any income generated from his use of one or both of the vehicles to operate the driving school.
- [5] Because of the defendant's high-handed and unconscionable taking of the wagon, the claimant has suffered loss and incurred expenses, including but not limited to vehicle rental fees, a letter of demand, the payment of insurance premium, and salary deductions for repayment of the loans, among other things. The defendant breached the claimant's implied rights to quiet enjoyment of the benefits under the agreement, and the claimant is entitled to all the relief sought in the claim.

Defendant's Case

- [6] On the other hand, the defendant contends that a certificate of ownership issued by the traffic department is only prima facie evidence of an interest in a vehicle. It is not determinative of ownership. Thus, where parties have both a legal and beneficial interest in the property, the parties may show that the beneficial interests are other than equal. Still, they have the onus of doing so.
- [7] In determining who has a greater beneficial interest in the motor vehicles, the court has to look at the conduct of the parties involved to determine whether a common intention can be inferred as to how they hold the beneficial interest. The relevant intention is what a reasonable person would

⁹ See paras 15 & 16 of SOC and 17 & 18 of DCC

¹⁰ See paras 20 of SOC and 22 of DCC

draw from the parties' words or conduct. The court must determine what inferences can reasonably be drawn, as each case depends on its facts. Where the most likely inference from the parties' conduct is that the beneficial interest was not to belong to whom the legal title is vested, the court must determine what is a fair share in all the circumstances.

Issues

[8] By their respective pretrial memorandum and written submissions, the claimant raised two issues¹¹ and the defendant six¹²; however, I believe that they all aim to ascertain the following:

1. What are the parties' respective interests in the wagon and the swift, despite being jointly registered in both parties' names? In other words, is there a resulting/constructive trust in favour of the defendant?
2. What, if any, is the sums of money owed or due to either party by the other?

Discussion

[9] There is common ground between the parties, the wagon and the swift were registered in their names at the Traffic Department. However, the defendant contends that this does not give rise to ownership of the vehicles in the claimant and relies for this position on **Jenifer Jacinth Carty v Oral Curtis Carty**¹³, where Lanns, J. (Ag) observed: "*that a certificate of ownership issued by the traffic department is only prima facie evidence of an interest in a vehicle ... it is not determinative of ownership.*"

¹¹ Whether the Defendant is liable to the Claimant for breach of agreement (or otherwise) and for the resulting remedies claimed in the Statement of Claim, to wit:- special damages, general damages, aggravated damages, interest and cost. Alternatively, in light of the contributions made by the parties and the overall course of dealings between them, what is the extent of the beneficial interests of each party in respect of the motor vehicles?

¹² 1. Whether the naming of the Claimant on the record at the Traffic Department is sufficient proof of ownership of the vehicles;
2. Whether the Claimant is entitled to be compensated half the value of the Toyota Corolla Wagon;
3. Whether the Claimant is entitled to be compensated half the value of the Suzuki Swift;
4. Whether the Claimant held title to the motor vehicles as a trustee in favour of the Defendant under a resulting trust; if not, what is the extent of the beneficial interest of both parties.
5. Whether the Defendant has made substantial contributions towards payment and maintenance of the Toyota Corolla Wagon and the Suzuki Swift, which entitles him to a greater beneficial interest than the beneficial interest of the Claimant.
6. Whether the Defendant has made substantial contributions towards payment and maintenance of the Toyota Corolla Wagon and the Suzuki Swift, which entitles him to possession.

¹³ Claim No, SKBHCV2015/0139 (1st May 2018) para [37]

[10] While Lanns, J. (Ag) choice of words quoted above may have been apt for the circumstances of that case, I do not believe that she was there stating a principle of law different from that stated in the case of **Stack v Dowden**¹⁴ dealing with land but followed it **EChinaCash Inc v Light Year Partners LLC et al.**¹⁵ dealing with company shares and **Nelson Louison v Margaret Stewart**¹⁶ dealing with a motor vehicle, that the registration creates a rebuttable presumption of legal and beneficial ownership in the registered party(ies). Accordingly, I hold that the parties are presumptively the legal and beneficial owners of the vehicles equally. Still, it is open to the defendant to seek to rebut this presumption by evidence that the claimant's ownership is a trust in his favour.

[11] In **Stack**, Baroness Hale of Richmond, giving the leading opinion of the House of Lords (now Supreme Court), observed that:

“56. Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.”

57.

58. The issue as it has been framed before us is whether a conveyance into joint names indicates only that each party is intended to have some beneficial interest but says nothing about the nature and extent of that beneficial interest, or whether a conveyance into joint names establishes a prime facie case of joint and equal beneficial interests until the contrary is shown. For the reasons already stated, at least in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved.

59. The question is, how, if at all, is the contrary to be proved? Is the starting point the presumption of resulting trust, under which shares are held in proportion to the parties' financial contributions to the acquisition of the property, unless the contributor or contributors can be shown to have had a contrary intention? Or is it that the contrary can be proved by looking at all the relevant circumstances in order to discern the parties' common intention?

¹⁴ [2007] UKHL 17

¹⁵ BVIHCVAP2010/032

¹⁶ GDAHCV2014/0360

60. The presumption of resulting trust is not a rule of law. According to Lord Diplock in *Pettitt v Pettitt* [1970] AC 777, at 823H, the equitable presumptions of intention are "no more than a consensus of judicial opinion disclosed by reported cases as to the most likely inference of fact to be drawn in the absence of any evidence to the contrary". Equity, being concerned with commercial realities, presumed against gifts and other windfalls (such as survivorship). But even equity was prepared to presume a gift where the recipient was the provider's wife or child. These days, the importance to be attached to who paid for what in a domestic context may be very different from its importance in other contexts or long ago. ... The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.

61. ... First, ... the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. Second, therefore, it does not enable the court to abandon that search in favour of the result which the court itself considers fair. For the court to impose its own view of what is fair upon the situation in which the parties find themselves would be to return to the days before *Pettitt v Pettitt* [1970] AC 777 without even the fig leaf of section 17 of the 1882 Act."

62. Furthermore, although the parties' intentions may change over the course of time, producing what my noble and learned friend, Lord Hoffmann, referred to in the course of argument as an "ambulatory" constructive trust, at any one time their interests must be the same for all purposes. They cannot at one and the same time intend, for example, a joint tenancy with survivorship should one of them die while they are still together, a tenancy in common in equal shares should they separate on amicable terms after the children have grown up, and a tenancy in common in unequal shares should they separate on acrimonious terms while the children are still with them."

- [12] Accordingly, the defendant must prove by cogent evidence a shared (or common) intention for him to retain exclusive ownership (possession and control) of the vehicles different from the legal ownership registered at the Traffic Department. It may be an expressed intention of the parties or inferred or imputed from the parties' conduct concerning the vehicles. Consequently, I will consider the situation of each vehicle in turn.

The Wagon

- [13] The undisputed facts are that the claimant and the defendant shared a common-law relationship, and the claimant gave birth to two children of whom the defendant is the father. They are and were at all material times when the cause of action arose the joint registered owners of the wagon. In 2013, the claimant obtained a loan facility with the Bank of Nova Scotia to purchase the wagon in her sole name, as the defendant could not qualify for a loan from a financial institution. In or about December 2014, after the parties broke off their relationship, the claimant signed a change of

ownership of the wagon in the defendant's favour on condition that the defendant continued to make the monthly loan payment of \$600.00 to the Bank of Nova Scotia, to which the defendant agreed. The defendant continued to pay the loan at \$600.00 monthly by salary deduction. After the loan for the wagon would have been paid in full, the defendant continued to allow the salary deduction of \$600.00 monthly to be deposited into the claimant's account. On 2nd March 2018, the defendant added the claimant as a co-owner of the wagon. In or about July 2018, when the parties again ended their common-law relationship and separated, the wagon remained in the possession and control of the claimant, who acquired its third-party insurance coverage with Massy United Insurance agents for \$512.55 for 2019. The defendant took possession of the wagon unilaterally on or about 19th April 2019.

[14] The defendant contends that a resulting trust was created in his favour regarding his exclusive ownership of the wagon, as there was such a common intention between the parties when the claimant agreed to transfer her ownership of the wagon in his sole name in 2014, he continued paying the loan, and he acted to his detriment, by making substantial contributions to the purchase price of the wagon as well as to its upkeep and maintenance. The defendant stated he also made indirect contributions initially when the wagon was purchased by paying the utilities and household expenses rather than paying the loan facility towards the wagon. He would not have made such significant contributions if he did not believe the wagon was entirely his. Also, the defendant always retained a key for the wagon to recognise his interest. The claimant has failed to produce evidence to support her allegation that he placed her name as an owner of the wagon in 2018 to recognise her interest.

[15] Further, the defendant submitted that he registered the claimant as a joint owner of the wagon to assist her with her job, not to recognise her having an interest in it as she claims. Being the supportive boyfriend (as he then was), he merely assisted the claimant as he recognised that she was the mother of his children and the person who made it possible for him to purchase the wagon. When they severed their relationship for the final time, he held no malice in his heart for the claimant. Thus, he allowed her to use the wagon not to inconvenience her job and considered that she had primary custody of the children.

- [16] At the outset and as noted above, the defendant seeks to dispute the presumption that the joint legal owners of the wagon are also the beneficial owners of it equally. Thus, it is for the defendant to prove that which he asserts. The claimant does not have to prove the defendant placed her name as a co-owner of the wagon in 2018 to recognise her interest therein, as this is presumed.
- [17] I accept the defendant's submissions that when the claimant agreed to transfer her ownership of the wagon in his sole name in 2014 for his continued paying of the loan, this would have evinced an intention that the claimant would have relinquished any legal interest she had in the wagon. However, the critical issue is the parties' intention when the defendant added the claimant as a co-owner of the wagon in March 2018, not what transpired in 2014.
- [18] The court notes the defendant's submissions and the suggestions to the claimant in cross-examination that on 2nd March 2018, the defendant registered the claimant as a joint owner of the wagon to facilitate her job as a social worker, which required her to have a vehicle registered in her name for the extensive travelling she would be required to undertake. The claimant denied this and stated that having a vehicle registered in her name was not required but acknowledged it was an asset. Still, there is no evidence from the defendant that this was the reason for adding the claimant's name as a co-owner, and it is trite that the suggestion to the witness is not evidence but rather their response.
- [19] As noted in **Stack** (para 60.), in domestic or familial situations, the considerations may differ with the court being prepared to presume a gift to negate the resulting trust, and the importance of contribution may now differ in the changed socio-economic realities. In **Louison**, Mr Louison had paid or substantially paid for a Honda CRV but registered it in the sole name of Ms Stewart. He said he never intended for her to own the vehicle and explained he did this due to an officer at the licensing authorities. Mr Louison alleged that since purchasing the Honda CRV, he gave Ms Stewart all the money required for the licensing fees and insurance premiums and undertook all the cost of its repairs and maintenance. Still, Master Corbin-Lincoln opined (para. [42]) that:
- "In my view, even if it is accepted that Mr. Louison fully financed the purchase of the motor vehicle and paid for all maintenance and associated costs this is not in itself indicative of a common intention to create a constructive trust. The evidence must be viewed in the context of the parties' relationship and specifically the course of conduct."

[20] I accept and adopt these views in **Stack** and **Louison** above and find that in the context of a common-law relationship with two young children, setting up and furnishing an apartment, and living together as a family, it was not unusual for each party to be liable for different aspects of the familial responsibility especially where they maintained separate finances. Therefore, the fact that the defendant may have paid a substantial part of the wagon's loan, maintained the vehicles, and paid the insurance was not inconsistent with the claimant's co-ownership. It is particularly so in this case, where the defendant used the wagon for his driving school business, and the claimant was not yet a licenced driver until 2017.

[21] Equally, the defendant's suggestions of being the supportive boyfriend merely assisted the claimant by placing her as the joint owner of the wagon, that he recognised she was the mother of his children and the person who made it possible for him to purchase the wagon, and not holding any malice in his heart for the claimant, he allowed her to use the wagon not to inconvenience her job and considered that she had primary custody of the children, do not aid the defendant's claim in my view. On the contrary, it gives greater force to the position that adding the claimant as co-owner was in recognition of her interest or, at the very least, as a gift to her, considering her significant contribution to the family and its acquisition.

[22] Consequently, the defendant failed to discharge his burden of proving a common intention of the parties when he added the claimant as a co-owner of the wagon in March 2018 or thereafter for him to retain exclusive ownership of the wagon or put otherwise to create a resulting or constructive trust in his favour. Therefore, the claimant is entitled to a half share of the wagon.

The Swift

[23] Like in the case of the wagon, the defendant who disputes the claimant's equal beneficial ownership of the swift must prove that the parties had a common intention that he would retain exclusive ownership of the swift or put otherwise to create a resulting or constructive trust in his favour.

[24] The agreed position of the parties was that in or about 2017, they discussed purchasing another vehicle for the family to get around more easily with the children since the defendant was using the Wagon for the driving school business. The defendant stated he decided to purchase the swift because he believed it would be a better vehicle for his students to drive. On the other hand, the claimant said she asked him to get her a family vehicle, like a Noah van since that would be large

enough for their family. Still, the defendant ordered the swift from Japan. She was upset because this was not the type of vehicle she had suggested to the defendant; nevertheless, it was on its way to Saint Lucia.

[25] There is no dispute that the defendant paid for the swift with a Bank of Saint Lucia loan but could not pay the customs duties and insurance when it arrived and that the claimant took a loan of \$15,480.00 from 1st National Bank to pay the customs duties and insurance for the swift. The defendant contends that he and the claimant agreed that from August 2017 onwards, the \$600.00 deducted from his salary would be for the loan payments to 1st National Bank. Further, as the swift was assigned to 1st National Bank, the claimant's name needed to be registered as an owner at the Ministry of Infrastructure, Transport Department, but he never intended for the claimant to have any interest in the vehicle. For that reason, he ensured that he maintained both vehicles and paid the loans, and after they broke up, he continued to allow the salary deductions of \$600.00 to the claimant's account to service the loan for the swift.

[26] The claimant admitted in cross-examination that the security for the loan was a bill of sale over the swift and that her name had to be registered at the Transport Board as she was the one taking the loan. However, she denied that the loan was the only reason her name was added to the swift. She stated she had an interest in it. She did not accept that the defendant asked her to take the loan, but it was always intended the swift would be for his sole use.

[27] The evidence shows that the defendant always intended to purchase the swift for use in his driving school business, which the claimant acknowledged in cross-examination was never agreed would be a joint venture between them, even though she said there were some discussions. The claimant seemed to have accepted that the swift was for the driving school business, even if it may have been reluctantly or forced. Her evidence was since she was the one paying the loan on the swift, she and the defendant had lengthy discussions about how they would use and access both vehicles. The defendant wanted to use the swift for his driving school business because he said it was easier for his students. The claimant admits she did not have a key for the swift but said she has access to it and can remember driving it only two or three times. The wagon was used to transport the family, while the defendant used the swift to operate his driving school.

[28] In the circumstances, I believe, following the principles enunciated in **Stack** (para [11] above), a trust in favour of the defendant is to be presumed as the parties had a common or shared intention that the defendant purchased the swift for use in the driving school, a commercial or business venture. Further, I am satisfied that the claimant was registered as an owner of the swift not to recognise her interest in it or at least make a gift of it to her as was the case with the wagon, but rather because the security for the loan was a bill of sale over the swift and she was the one taking the loan.

[29] While there is a dispute about who paid the 1st National Bank loan for reasons I will discuss later concerning consideration of the contributions made in a familial situation, I do not find this adverse to the defendant's claim. Moreover, the claimant's additional witness statement filed on 22nd September 2020 suggests she may have relinquished her claim for an interest in the swift. However, the defendant must reimburse the claimant for the 1st National Bank loan payments outside their familial living arrangements.

Damages

[30] The claimant claims an order that the defendant pays the balance of the 1st National Bank loan of \$6,450.00; special damages of \$13,562.55 (particularised as loss of use of the wagon (11 days, 19 - 30th April 2019 at \$150.00 per day) of \$1,650.00, rental fees of \$3,000.00 for rental of a vehicle for May and June 2019, salary deductions of \$8,400.00 and continuing towards payment of the 1st National Bank loan, and insurance coverage for the wagon of \$512.55); aggravated damages; and general damages for breach of agreement and inconvenience.

[31] The defendant denied responsibility for any damage or loss suffered by the claimant, save, if any, the sum of \$3,492.55 (comprising \$512.55 for the insurance coverage for the wagon and \$2,980.06 being the balance he owed on 1st National Bank loan for the swift). This sum, he claimed, should be off-set against the \$5,000.00 owed to him by the claimant (being the sum advanced to the claimant by him in or about 2013 as a security deposit for the loan taken at the Bank of Nova Scotia, which sum the claimant failed to refund him after the payoff of the wagon in or about 2016). The claimant should pay him the net sum of \$1,507.45 in full and final settlement of the total debt due together with interest at the statutory rate of 6% and costs.

[32] I propose dealing with the issues concerning the loss of use of the wagon and the 1st National Bank loan in turn. Still, I wish to make a preliminary observation before doing so. While this matter is not a matrimonial ancillary claim, the parties had an on-and-off intimate relationship of almost 12 years with two young children. They shared a home (apartment) at least twice. There would have been loans and acquisitions, expenditures and payments, compromises, and give and take over the life of the relationship. As such, this court will not engage in any lengthy tracing exercise or mathematical computation to determine the parties' various expenditures and payments or contributions during the subsistence of their relationship.

[33] Consequently, I am not prepared to entertain the claim by the defendant that the claimant owed him \$5,000.00, the sum allegedly advanced to the claimant by him in or about 2013 as a security deposit for the loan taken at the Bank of Nova Scotia to purchase the wagon, which sum the claimant failed to refund him after the payoff for the wagon in or about 2016. There has been too much water under that bridge since then. In any event, apart from his bald statement that he made such payment to the claimant (which she denied), the defendant has not provided any evidence to substantiate his claim. At best, the receipt (exhibit "BP1") on which he relies indicates his acknowledgement of receiving \$5,000.00 from one Linda Oscar on 7th May 2013, nothing more.

[34] Regarding the loss of use of the wagon and general damages for breach of agreement and inconvenience, in *Lisa Francis and another v Ivor Gore and another*,¹⁷ the court observed that:

"46. On the matter of loss of use, I helpfully refer to **Butterworths Personal Injury Litigation Service** where it is noted that:

If the claimant's motor vehicle has been damaged and rendered non-roadworthy in the accident a claim can be made for the period of time that the claimant is without the use of the vehicle. The value of the claim will be determined by a variety of factors including type of vehicle and its age, the impact of the loss upon the claimant's everyday life and the availability of alternative means of transport service. In the event that the claimant is provided with a hire vehicle, there will be no claim for loss of use and the claimant will be restricted to a claim for the cost of hire charges."

¹⁷ ANUHCv2016/0472, [2020] ECSCJ No. 133

Further, in *Alexander v Rolls Royce Motor Cars Ltd.*,¹⁸ the English Court of Appeal said (page 102C):

"Notwithstanding that no substitute vehicle has been hired, judges have awarded compensation for loss of use of a vehicle while it is being repaired where it has been shown that inconvenience has been caused or, for example, that the owner has had to use public transport, or walk or that a family have been deprived of the advantage of a family car where otherwise they would have used the car which had been damaged. In short ... a sum is given which in the circumstances of the particular case would be regarded as compensation for the particular wrong suffered."

- [35] It appears that this head of general damages was awarded to compensate a claimant primarily for the inconvenience suffered from the loss of use of the vehicle and not simply because the vehicle was unavailable. Consequently, there may be some double claiming by the claimant as it relates to her claim for loss of use and rental fees and general damages for breach of agreement and inconvenience so that I will consider them together as a single claim of the inconvenience suffered from the loss of use of the Wagon.
- [36] The common position of the parties is that in or about July 2018, when they again ended their relationship and separated, the wagon remained in the possession and control of the claimant, who acquired third-party insurance coverage for the wagon with Massy United Insurance Agents for \$512.55 for 2019. However, on or about 19th April 2019, the defendant came to her residence and took possession of the wagon.
- [37] The claimant asserts that the defendant's taking of the wagon left her and their children stranded and gravely inconvenienced them. It restricted her means of transportation to and from work since she had to take the bus all over the Island to conduct interviews and other assessments as part of her job. It also hampered her scheduling as she had to take the children to and from school, take them to extra-curricular activities, and perform other daily activities as a family. They had to do all of this mostly by using public transportation. By the end of April 2019, she was exhausted. As a result, she had no choice but to rent a motor vehicle from Davidson Daniel during May and June 2019 to transport herself to and from work and the children to and from school and extra-curricular activities.

¹⁸ [1996] RTR 95,

- [38] In cross-examination, the claimant insisted that she made many requests for the defendant to return the wagon even going to the police, and the defendant's response was she did not own the vehicle. She acknowledged she did not ask the defendant to assist with transportation with the children as they had a bad back on forth. She felt it was malicious of him, so she had to seek assistance right away.
- [39] The defendant acknowledged in cross-examination that he went to take the wagon sometime after eight and minutes to nine, well after dark. He did not say anything to the claimant. He indicated he and the claimant argued just before he went and took the wagon. He knows the claimant used the wagon to take the children to school and for her work. That was why he left it with her. Still, he admitted taking it from her after their argument and knew she had no other vehicle. However, he denied she was stranded and stated he was always available to take the children to their extra-curricular activities.
- [40] From the evidence, I am satisfied that there was some inconvenience to the claimant from the loss of use of the wagon, which the defendant had inevitably appreciated.
- [41] The court seeks to provide reasonable compensation for the loss suffered in line with similar awards in comparable cases. However, given I found that the claimant and defendant are the equal legal and beneficial owners of the wagon, it begs whether the defendant is liable to pay her loss of use or, put otherwise, occupational rent. In **Carty**, Lanns, J. (Ag) considered this issue, and referring to **Herbert Reid v Michele Reid**,¹⁹ she concluded:
- "[27] Generally, joint owners are not allowed to reap rent from one another for mere occupation of premises. This is because co-owners are jointly entitled to the entire property and each is entitled to enjoy possession along with the other. However, it appears there are exceptions to this rule"
- [42] The general rule and the exceptions were discussed in **Reid** as follows:
- "[46] The law does not allow tenants in common to reap rent from one another for mere occupation of the premises. This position is grounded by the proposition that co-owners are jointly entitled to the entire estate and each is entitled to enjoy possession along with the other: **M'Mahon v Burchell** 47 ER 944.
- [47] Notably, there are exceptions to this rule. ...

¹⁹ [2016] JMSC Civ. 204

- [48] Firstly, there is a presumption that a spouse is entitled to occupation rent by the other who has left the matrimonial home following breakdown of the marriage. In **Re Pavlou**, [1993] 1 WLR 1046, Millet J said

'I take the law to be to the following effect. First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the co-owner in occupation has ousted the other, but in any other case in which it is necessary in order to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forceful exclusion therefore is far from conclusive. Secondly, where it is a matrimonial home and the marriage has broken down, the party who leaves the property will, in most cases, be regarded as excluded from the family home, so that an occupation rent should be paid by the co-owner who remains. But that is not a rule of law; that is merely a statement of the prima facie conclusion to be drawn from the facts. The true position is that if a tenant in common leaves the property voluntarily, but would be welcome back and would be in a position to enjoy his or her right to occupy, it would normally not be fair or equitable to the remaining tenant in common to charge him or her with an occupation rent which he or she never expected to pay.'

There is another important note to recover from this point, that is, equity will order the payment of occupation rent where it is necessary to 'do equity between the parties.' As was said in the case of **Blake v Blake** [2016] JMSC Civ. 63, by Mr. Justice Evan Brown,

'...the award of an occupation rent is not an arbitrary judicial gesture. An occupation rent only becomes chargeable to adjust the balance between coowners. Mere occupation has never been a sufficient basis to levy an occupation rent. The balance between co-owners may require adjustment as a result of the unlawful or inequitable actions of one or more co-owners.'

- [49] Secondly, occupation rent may be due where the occupying co-owner lets a part of the property and thus reaps a benefit: **Jones v Jones** [1977] 1 WLR 438.
- [50] Lastly, a co-owner will be liable to another for rent, in the absence of an ouster, where there is a contract or some agreement which stipulates payment. This was the salient point made in the case of **M'Mahon v Burchell**.
- [51] However, even in the absence of an ouster, it is important to note that a coowner who voluntarily gives up occupation may lay a claim to occupation rent where he can show that the legal or equitable balance has been disturbed: **Beverley Simpson v Anslyn Simpson** Cl. No. E129/2000 (unreported). Again, as Brown J, has held in **Blake**, this is where equity must make things right."

- [43] Applying the above principles, I am satisfied that the defendant's unilateral taking of the wagon effectively ousted and forcefully excluded the claimant from its use and enjoyment to which she was entitled. Therefore, the court would intervene to adjust the balance between the parties and make things right.
- [44] The claimant said the rental cost for the vehicle for May and June 2019 was \$1,500.00 per month and adduced a copy of the receipt to this effect for the car rental (exhibit "VBI0"). The claimant also admitted in cross-examination having had access to the rental vehicle from April, but there was no official rental agreement. She stated that whenever she used the vehicle in April, it cost \$150.00 daily. The defendant has not really challenged the flat rate of \$1,500.00 per month for May and June, nor the daily rate of \$150.00 per day for April. However, he has put to the claimant in cross-examination that she did not pay for the rental, hence the reason there was no written agreement (which she denied and referred to her receipt for the two months payment) and that she did not check to see what renting a vehicle as the 1998 wagon would cost (which she accepted). Still, the claimant indicated she had options but went with Mr Daniel because it was cheaper. She explained that she knew Mr Daniel before the rental arrangement as he was her husband's godfather.
- [45] I accept the claimant's evidence. The court has generally made an award for loss of use based on a daily rate and invariably awarded loss of use for private vehicles at \$150.00 daily.²⁰ Consequently, I would award the claimant damages for the inconvenience suffered from the loss of use of the wagon at the rates claimed. However, given that the claimant was only a half-owner of the wagon, the damages should be prorated as such, and she will receive the sum of \$2,325.00. The claimant shall also be entitled to the cost of the insurance coverage for the wagon of \$512.55, which the defendant conceded²¹ as she did not get its benefit.
- [46] I turn now to the payments of the 1st National Bank loan. The claimant, by her additional witness statement filed on 22nd September 2020, appears to have revised her claim concerning the 1st National Bank loan to a single prayer of the repayment amount of \$15,480.00 from the balance of the loan of \$6,450.00 and the salary deductions of \$8,400.00 and continuing towards payment on the said loan. Still, there is no record of an amendment to the claim or an application to do so.

²⁰ Lisa Francis and another v Ivor Gore and another, *supra*; and Orlando Edwin v Orin Choyee et al., SLUHCV2017/0165

²¹ See paras 22 of DCC and 57 of his written closing submissions filed on 4th May 2021

- [47] Having determined that there is a trust in favour of the defendant as the sole beneficial owner of the swift for the reasons given above, the defendant should reimburse the claimant for the payments made to the loan after their relationship ended and they ceased living together as a family in July 2018.
- [48] As indicated before, this court will not engage in an exercise seeking to unravel the parties' various expenditures, payments and or contributions when they lived together during the subsistence of their relationship. These should lie where they have fallen, as I believe there is little or no value to be achieved otherwise. The parties have acknowledged that when they lived together, they did things together. There was the apartment, the loan for the furniture, the upkeep and maintenance of the vehicles, the expenses for the children and themselves, the claimant's studies and graduation, etc. Indeed, in cross-examination, the claimant stated apart from the \$600.00 salary deduction that continued after the Bank of Nova Scotia loan for the wagon was paid off, the defendant made no other contribution. The \$600 went towards the household and the children for assisting with the bills. The defendant did not go to the supermarket and buy groceries, but he would purchase snacks and the like. He did help a bit with the school fees but it was always her responsibility to get things for the children.
- [49] The claimant obtained the 1st National Bank loan to pay the customs duties and insurance for the swift in July 2017. When the relationship ended in July 2018, the loan's outstanding balance was \$10,320.00, as shown on the loan activity statement dated 22nd April 2022 (exhibit "BP6"). The undisputed evidence is that the defendant's salary deduction of \$600.00 to the claimant continued from August 2018 to March 2019, giving a total of \$4,800.00. Applying this sum to the loan's outstanding balance leaves \$5,520.00, which the defendant must reimburse the claimant for completing the payments.
- [50] I applied the salary deductions to the loan as there was some dispute about whether the deductions continued after the Bank of Nova Scotia loan for the wagon was paid in full because the defendant never made the time or effort to stop the deductions or he informed the claimant that it was for household expenses and children maintenance. While the claimant's evidence seems more logical and believable, the claimant did not ask this court to make provisions for the maintenance and

welfare of the children, nor is it the proper forum for such arrangements, even though I am of the firm view that parents are equally responsible the maintenance and welfare of their children.

[51] The claimant also claimed aggravated damages and contended that, in all the circumstances, the defendant could be said to have acted in a manner that was deliberately committed, flagrant, spiteful, outrageous or high-handed, which warrants compensation to take account of this fact, she relied on *Richardson v Howie*.²²

[52] I agree with the claimant that the defendant's actions, as admitted in his cross-examination (para [39] above) and the questions put to the claimant in cross-examination that her fiancé (now husband) drove the wagon between the defendant leaving the apartment in July of 2018 and taking possession of the wagon in April of 2019 suggests some ill will towards the claimant despite the defendant's claim of having no malice towards her. He has not suggested or offered any reasons or explanation as to why he needed to take possession of the wagon as he did. However, I am not convinced on the evidence before me that the circumstances were such that the defendant's conduct or motive was exceptional or contumelious and that the claimant suffered any significant injury, if any, to her personality by the defendant's conduct to warrant an award of aggravated damages: *Richardson* (para 16).

Conclusion

[53] As quoted above (paras [1] and [2]), the parties claim various orders in relief. Considering my decision concerning the ownership of the wagon and the swift, I am prepared to grant the orders prayed in paragraphs (a) but not (b) and (c) of the claimant's claim and paragraphs ii) and iv) of the defendant's counterclaim. The claimant succeeded in her claims for compensation or damages for the inconvenience suffered from the loss of use of the wagon of \$2,325.00, the insurance coverage for the wagon of \$512.55, and the 1st National Bank loan of \$5,520.00. She is also entitled to a half share of the wagon. Still, I have insufficient material to determine half the value of the wagon. It is hoped that the parties would be able to agree on the value of the wagon amicably, but failing that, either party may make an application to the court for its determination.

²² [2004] EWCA Civ 1127

[54] The claimant has also claimed interest on the damages under Article 1009A of the Civil Code of Saint Lucia, costs, and further or other relief.

[55] As a general principle, interest is usually awarded on special damages from the date of the incident to the date of judgment at half of the applicable rate, while on general damages from the date of service of the claim to the date of judgment at the appropriate rate, and both species of damages at the applicable rate from the date of judgment until payment. Accordingly, I award interest of 3% per annum on the damages of \$8,357.55 plus half the value of the wagon from 6th June 2019 to the date of judgment and 6% per annum after that until payment in full.

[56] The prescribed costs regime is applicable for awarding costs in this case. The usual practice is that costs follow the event, and in a case involving a counterclaim, separate costs for the claim and the counterclaim would be awarded. However, because the claim and counterclaim dealt with the same issues and both parties succeeded in respect of some of their orders claimed, I do not propose to make separate orders. I believe that the claimant was the overall winner in terms of the orders claimed and considering how this case proceeded in that the defendant refused to engage in discussion with the claimant for a possible amicable resolution of the matter even after receipt of the letter from her Attorneys-at-Law, the defendant shall pay the claimant's prescribed costs on the sums awarded to her.

[57] Accordingly, IT IS ORDERED THAT:

1. The court declares that the claimant and defendant are the legal and beneficial owners of the wagon; however, the parties shall sign a change of ownership, making the defendant the sole registered owner and him paying the claimant half of its value to be determined on an application if not agreed.
2. The court declares that the defendant is the legal and beneficial owner of the swift, so the claimant shall sign a change of ownership, making the defendant its sole registered owner.
3. The defendant shall pay the claimant damages of \$8,357.55 plus half the value of the wagon with interest under Article 1009A of the Civil Code at 3% per annum from 6th June 2019 to the date of judgment and 6% per annum after that until payment in full.

4. The defendant shall pay the claimant the prescribed costs on the total award according to CPR 65.5.



**Justice Rohan A Phillip
High Court Judge**

By the Court

Registrar