THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

MONTSERRAT

CLAIM NO. MNIHCV 2022/0017

BETWEEN:

[1] SHERYLE J. MEADE

Claimant

and

[1] JANET DYER-MEADE

Defendant

Appearances:

Ms. Marcelle Watts for the Claimant
Mr. Sylvester Carrott for the Defendant

2024: FEBRUARY 26

2024: MAY 29

JUDGMENT

FITZPATRICK [AG.]:

THE COURT CONSIDERED THE FOLLOWING:

[1] The Claimant is the daughter of the late Samuel E. Meade.

[2] The Defendant is the spouse of the late Mr. Meade. They married on December 8, 2021 following, what she describes as, a two plus decades long relationship and cohabitation.

[3] Mr. Meade purchased a vacant property in Woodlands, Montserrat, namely Parcel 143 of Block 12/3 Beachettes Registration (the "Woodlands Property") on January 28, 2002.

[4] Mr. Meade had the title registered in his name and the Claimants as "joint proprietors".

[5] Mr. Meade retained counsel and had the Claimant served with a Notice to Sever on January 21, 2022. A letter dated from Mr. Meade to the Claimant dated January 21, 2022 was also then presented to the Claimant. This letter expressed Mr. Meade's "intention to immediately sever the Joint Tenancy…to the intent that we shall henceforth hold the said property as Tenants in Common."

[6] Mr. Meade made a Last Will dated February 7, 2022 leaving his interest in the Woodlands Property to the Defendant.

[7] Mr. Meade passed on February 8, 2022.

[8] On February 23, 2022, the Defendant had a Caution registered against the title abstract for the Woodlands Property forbidding the registration of dispositions and the making of entries of any other kind.

[9] The Defendant has been in exclusive physical possession of and resident at the Woodlands Property since the date of Mr. Meade's passing continuing to the present.

[10] The Claimant takes the position that she is now the sole owner of the Woodlands Property by right of survivorship effective from the date of Mr. Meade's passing. She asks that the Defendant be ordered to vacate. She also claims various household contents located at the Woodlands Property as being hers.

[11] The Defendant claims "an equitable interest in my deceased Husband's share being part owner" of the Woodlands Property.

The Trial Evidence

[12] The trial of this action was completed in less than one day. Each party testified and each called lay supporting witnesses. All witnesses adopted his/her witness statement as evidence in chief and were subject to cross-examination. I below review the material evidence from each side.

The Evidence for the Claimant

[13] The Claimant was shown and adopted the contents of her Witness Statement with exhibits filed November 9, 2022 as her evidence in chief.

[14] The Claimant's evidence was that the Woodlands Property was "purchased by my later father, Samuel E. Meade" on January 28, 2002. She states that "in several of our conversations, he always said that he made the conscious decision to add me, his lawful daughter as a registered proprietor…that I should own this property outright should he predecease me. Dad had always envisaged that as the only child of the marriage, I would have been the sole beneficiary of what was then the family home" (see: paragraph 5. of the Claimant's Witness Statement filed November 9, 2022).

[15] The Claimant's evidence was that her father obtained loans and had earnings that paid for the Woodlands Property and residence. The Claimant did not claim that she contributed monies to either the purchase of the Woodlands Property or to the building of the house thereon.

[16] The Claimant provided a letter from the Montserrat Land Development Authority confirming that Mr. Meade received a grant of $41,390.00 in September, 2002 to assist with the construction of a residence at the Woodlands Property.

[17] In addition, the Claimant was a signatory of a bank loan obtained by her father in the amount of $85,000 at January, 2004 that was registered against the title to the property. The Claimant did not contribute any funds to the repayment of this bank loan.

[18] The Claimant's evidence was that her father was the manager and cook at the Blue Dolphin restaurant and later head chef at the Glendon Hospital. Her father also did private catering jobs. In addition, Mr. Meade had a contract to provide bus transport for the nurses working at the Glendon Hospital.

[19] The Claimant noted that her father's ability to work was diminished following his very serious stroke in 2011 not making a full recovery until 2014 but that he maintained the hospital transport contract by having a friend do the driving.

[20] The Claimant was never resident at the Woodlands Property. She had relocated to Boston, Massachusetts, U.S.A. by the time the Woodlands Property was purchased and did not return to Montserrat until December, 2008. She did not reside at the Woodlands Property following her return to Montserrat.

[21] The Claimant says that she brought household furnishings from Boston and placed them in the residence on the Woodlands Property. She explained that she provided those items to her father "to furnish our home". The Claimant now seeks the return of these items.

[22] In addition to the furnishings for the Woodlands Property residence, the Claimant states that she "made other contributions to the maintenance and upkeep of the property". The Claimant could not provide any details or documentation in support of this. She stated that she contributed money but that she did not keep any record given that she was providing money to her father.

[23] The Claimant testified that she "became aware" of the Defendant in the early 2000s. She could not say whether the Defendant was her father's "main one" although she was aware that the Defendant was living with her father since 2001. That said, the Claimant stated that the Defendant was at the Woodlands Property "on and off".

[24] The Claimant testified that she had a "bad history" with the Defendant.

[25] The Claimant had one witness testify in support of her claim, namely her brother, Gustave Wayne Lee also known as "JIP". Mr. Lee provided his evidence

remotely from the United States where he now resides. Mr. Lee was shown and adopted the contents of his Witness Statement filed May 17, 2023 as his evidence in chief.

[26] Mr. Lee is the eldest child of the late Mr. Meade.

[27] Mr. Lee relocated to the United States in 1988 and remains there. He testified to returning to Montserrat annually in March for about two weeks each visit commencing in 2002. He said that he lived with his father each time he returned to Montserrat.

[28] Mr. Lee's evidence was that the Defendant was in a relationship and living with his father in rented accommodations in Salem when Mr. Lee visited in 2002.

[29] Mr. Lee described his father's relationship with the Defendant as "maybe in love with each other; I know they did care for each other when I visited".

[30] Mr. Lee confirmed that the Defendant continued to live with his father when the residence was built at the Woodlands Property. Mr. Lee testified that the Defendant remained living at the Woodlands Property each time he visited until 2018 when she was not there. Mr. Lee said that the Defendant was not there when he visited in 2019 and 2020 although she would stop in to deliver "food and other things".

[31] Mr. Lee's evidence was that he was unaware of any women other than the Defendant being present when he visited and stayed with his father.

[32] Mr. Lee noted that his father worked at the Blue Dolphin Restaurant, Coconut Hill Hotel and Vue Point Hotel along with doing catering prior to his 2011 stroke. Mr. Lee's evidence was that his father taught the Defendant how to make and ice cakes. He also noted his father was "not in the best physical condition" following the stroke impacting his ability to work, including catering and that he relied on a friend to do the driving for the hospital transport contract.

[33] Mr. Lee testified to having a very close relationship with his father. Interestingly, Mr. Lee did not provide any evidence about his father expressing an intention for the Woodlands Property to be owned by the Claimant when he passed.

The Evidence for the Defendant

[34] The Defendant was shown and adopted the contents of her Witness Statement with exhibits filed November 9, 2022 as her evidence in chief.

[35] In addition, the Defendant filed a 149 double sided page bundle of receipts related to the building, maintenance and improvement of the Woodlands Property residence. All of the receipts were in the name of Mr. Meade.

[36] The Defendant's evidence is that she and Mr. Meade began a relationship in the 1990s and by 2000 were sharing rented accommodations in Salem.

[37] The Defendant states that she and Mr. Meade began talking about buying land and there building "our home" in 2002. A property in Olveston was then discussed but rejected by the Defendant. She and Mr. Meade subsequently visited the Woodlands Property and together decided an offer should be made to acquire it. She states that Mr. Meade negotiated and paid the $30,000 purchase price for the Woodlands Property.

[38] The Defendant's evidence was that she was unaware that the Claimant's name was added to the title for the Woodlands Property at the time it was purchased.

[39] The Defendant noted that Mr. Meade obtained a building grant from the Government of Montserrat in the amount of $41,390 in 2002 and a subsequent bank loan of $60,000, which he used to build the residence on the Woodlands Property.

[40] The Defendant's evidence was that the home was built in large part through the labours of Mr. Meade and his friends "maroon" style. The Defendant attended to contribute by preparing food for the men on site working.

[41] The Defendant's evidence was that Mr. Meade subsequently advised that the Claimant's name was added to the title for the Woodlands Property to facilitate Mr. Meade obtaining the building bank loan. She learned this narrative was false after going through Mr. Meade's papers following his death.

[42] The Defendant says the she and Mr. Meade worked together doing catering both at Glendon Hospital and a business operating as Simon's Catering. She said that all funds received were paid to Mr. Meade. Her evidence was that she and Mr. Meade used these funds for the building loan repayments, to purchase the building materials and otherwise applied these funds to their household expenses at the Woodlands Property. She said that Mr. Meade was the one who dealt with the purchase of the building and related materials for the Property with the result that all receipts were put into his name although joint funds were used.

[43] The Defendant noted that Mr. Meade had a stroke in 2011 requiring him to seek medical treatment and resulting in ongoing recovery into 2014. The Defendant states that she cared for Mr. Meade throughout and was the primary financial contributor to their household during that period.

[44] The Defendant noted that Mr. Meade became ill again in August, 2021. He was admitted to hospital in January, 2022 and passed on February 8th.

[45] The Defendant's evidence was that she cohabited with Mr. Meade at the Woodlands Property from the time the residence was built until Mr. Meade passed excepting for eight months in 2018 when she travelled to England for medical treatment and one time when she absented herself for two days following her discovery of Mr. Meade in their home being intimate with another woman.

[46] The Defendant denied that she was absent from the Woodlands Property in either 2019 or following when Mr. Lee visited.

[47] The Defendant has continued to occupy the Woodlands Property since Mr. Meade's passing. She testified to completing the work on the residence veranda following Mr. Meade's passing.

[48] It must be noted that the Defendant is the sole owner of another residence located in Nixon. She acquired this property in 2002. The Defendant's evidence was that this house has been in the process of being extensively renovated. Toward that end, the Defendant obtained financing in excess of $200,000.00 EC registered against the property. This residence was not occupied or used by the Defendant and Mr. Meade during their relationship. The Defendant said her intention for this residence was to leave it for her children.

[49] The Defendant says that she and Mr. Meade were in a relationship for 31 years, which would suggest it commenced in or about 1992. Her evidence is that she and Mr. Meade provided all finances for the purchase of the Woodlands Property and the residence built thereon without any contribution from the Claimant. The Defendant submits the Woodlands Property is her home that she should not be evicted from.

[50] The Defendant had two witnesses testify in support of her case, namely Reuben Meade and Cecil Robinson.

[51] Reuben Meade was shown and adopted the contents of his Witness Statement filed March 20, 2023 as his evidence in chief.

[52] Reuben Meade is the brother of the late Simon Meade. He testified remotely from the United States where he resides. I will refer to Reuben Meade as Reuben to avoid any confusion with Simon Meade who I shall continue to reference as Mr. Meade. I mean no disrespect to Reuben Meade in so doing.

[53] Reuben forthrightly acknowledged that he does not "get on" with the Claimant and that he supported the Defendant in this matter.

[54] Reuben's evidence was of a very close relationship with Mr. Meade that included weekly telephone visits.

[55] Reuben stated that he became aware of the Defendant and Mr. Meade being in a relationship commencing around 1990. He advised that, over time, the Defendant was considered to be family.

[56] Reuben described the relationship between the Defendant and Mr. Meade as being "very close". He stated that they worked together in a business and also at Glendon Hospital. Reuben was told by his brother that the Defendant "greatly assisted him".

[57] Reuben testified to being told by Mr. Meade of his intention to buy land and to build a home on it. Reuben was told by his brother that the property was being registered in the name of Mr. Meade and the Claimant for the expressed purpose of obtaining a building bank loan, which concerned Reuben.

[58] Reuben's evidence was that Mr. Meade had a stroke in 2011. He says that the Defendant was the "main breadwinner" from that point forward, that she maintained and improved the Woodlands Property residence and that she also was Mr. Meade's caregiver.

[59] Reuben states that Mr. Meade was clear that it was he and the Defendant who provided all of the finances for the mortgage and improvements to the Woodlands Property without any contribution from the Claimant.

[60] Reuben's evidence was that Mr. Meade intended the Woodlands Property to be his and the Defendant's home. Reuben offered his view that the Woodlands Property would neither have been acquired nor a residence built on it without the Defendant's contributions.

[61] The other support witness called by the Defendant was Cecil Robinson. Mr. Robinson was shown and adopted the contents of his Witness Statement filed June 16, 2023 as his evidence in chief.

[62] Mr. Robinson was a lifelong friend of Mr. Meade at one point living with him and the Defendant when they shared the rented accommodations in Salem.

[63] Mr. Robinson's evidence was that he helped Mr. Meade build the residence at the Woodlands Property from foundation to roof.

[64] Mr. Robinson stated that he always knew Mr. Meade and the Defendant to be a couple. He says that he visited Mr. Meade weekly and that the Defendant was

always present except for one unspecified period of a week or two when she was absent. Mr. Robinson said that they thereafter "were back together again".

[65] Mr. Robinson's evidence was that Mr. Meade advised that he was grateful for the care the Defendant gave him, expressed his love for her and indicated the Woodlands Property would be given to the Defendant.

Analysis

[66] Overall, the Court preferred the evidence of the Defendant where in conflict with that of the Claimant. There is one simple reason for this. The Claimant presented as an unnecessarily hostile witness, especially pertaining to the Defendant. I appreciate that litigation can be emotional. This tends to be exacerbated where the disputes are intra family as here. That said, the degree of the Claimant's hostility tainted her credibility. The Defendant, by comparison, was measured and mostly calm when giving her testimony. She answered directly even when to her detriment.

[67] The question to be decided is whether the Defendant has any claim to the Woodlands Property and whether any claim so found has priority to the Claimant's survivorship right in that Property.

[68] The whole of the evidence directs this Court to find that the Defendant has a 50% interest in the Property. There are two paths to this conclusion both anchored in the law of trusts.

[69] The first path is by way of resulting trust.

[70] It is trite to state that legal ownership and beneficial ownership are independent. They can be but do not have to be held by the same party. The legal or titled owner and the beneficial owner have different rights. For example, it is the beneficial owner who enjoys the right to occupy among other entitlements. This distinction is seminal to the so called law of trusts.

[71] Resulting trusts have been recognized in law for hundreds of years. The oft referenced rationale supporting same is that equity or fairness presumes a bargain and not a gift.

[72] Trusts can arise in various scenarios. For example, if one person (Party A) provides the purchase monies but places title in the name of another (Party B) then it is presumed that the person who paid did not intend to gift the property to the other. In such circumstances, a resulting trust is imposed whereby the other person (Party B) holds any property in name only as trustee without ownership for the paying party (Party A). The paying party retains the full beneficial ownership of the property [see: *Westdeutche Landesbank Girozentrale v. Islington London Borough Council* [1996] AC 669 at 708].

[73] A presumed resulting trust is not indefeasible. The presumption can be rebutted upon the other party presenting persuasive evidence, on the civil standard, that the purchaser intended a gift [see: *Westdeutche Landesbank Girozentrale v. Islington London Borough Council* [1996] AC 669 at 708].

[74] A resulting trust analysis addresses the relationship between Mr. Meade and the Claimant as it pertains to the Property. Specifically, the Court must look to the evidence available to determine Mr. Meade's intentions at the time he registered title to the Woodlands Property jointly in his name and the Claimant's.

[75] The evidence is unequivocal that the Claimant made no contribution of whatsoever kind to the acquisition of the land, construction financing or otherwise to the building of the residence, or towards any maintenance and improvement of the land and building. The vague and undocumented claims of intermittent monies to Mr. Meade do not suffice to establish contributions to the Property.

[76] The only other evidence of potential contribution by the Claimant was the household contents she alleges to have donated to the Property when she relocated back to Montserrat from Boston, U.S.A. As counsel for the Defendant accurately points out, the return of these items forms part of the relief sought by the Claimant herein. In other words, these were never contributed to the late Mr.

Meade or to the Property instead always being in the alleged ownership of the Claimant who wants these items now returned to her.

[77] What does the Claimant's complete lack of contribution to the Property purchase or thereafter mean?

[78] The law presumes that Mr. Meade did not intend to give a share of the Woodlands Property to the Claimant. Instead, the law presumes that Mr. Meade intended that the Claimant held the share of the Property in her name for her father. In other words, Mr. Meade paid the entire purchase price and, therefore, was the exclusive beneficial owner of the Property, including any share held in the name of the Claimant.

[79] The Claimant had the obligation and opportunity to provide evidence to this Court to rebut the presumption of bargain and establish that Mr. Meade intended a gift to her of a share of the Property. The Claimant provided no such evidence except for her uncorroborated and general account of Mr. Meade's expressed intention to have the Property pass to her alone on the basis that she was the only child born of his marriage prior to the Defendant.

[80] The Claimant's brother, Mr. Lee offered no evidence corroborating these alleged expressions of intent by their father. It is also noteworthy that the Claimant did not provide any timeframe for these alleged expressions of intent by Mr. Meade. Were they made at the time of the title registration or when?

[81] The limited evidence presented by the Claimant is not sufficient to rebut the presumption of a resulting trust with consideration to the other evidence presented during this trial.

[82] Despite the limited proof from the Claimant, the Court must look to the whole of the evidence towards determining the true intentions of Mr. Meade when he registered title to the Property jointly in his name and the Claimant's.

[83] It is clear that Mr. Meade did not need to name the Claimant as a registered owner at the time the Property was purchased. There was no mortgage or other loan required for the initial purchase of the Property, which was then vacant land.

This was not a situation where Mr. Meade needed the Claimant named as a joint owner to obtain financing for the purchase. The evidence at trial confirmed that Mr. Meade used his personal savings for the original purchase of the Property.

[84] It does appear on the evidence that Mr. Meade needed the added credit heft associated with the Claimant being a registered joint owner when he was acquiring financing to complete the construction of the residence on the Property. She signed for this $85,000.00 EC loan along with Mr. Meade, which was registered against the title abstract for the Property on January 13, 2004. This was two years after the Property was registered in the names of Mr. Meade and the Claimant. Again, the Claimant did not contribute to any repayment of this loan.

[85] The Court would be directed towards a finding that the Claimant held her joint interest in the Property entirely in trust for Mr. Meade based on the evidence addressed so far. There is no doubt that, as between them, Mr. Meade contributed all and the Claimant none of the funds to acquire and improve the Property, including the building of the residence. This would result in the entire ownership of the Property forming part of Mr. Meade's estate for distribution thereunder. However, there was other relevant evidence bearing upon this determination.

[86] The $85,000.00 EC building loan signed for by the Claimant and Mr. Meade was paid off by March 24, 2011 when the related entry on the title register was struck off. This is significant given that there was no need for the Claimant to remain on title once this financing was paid off. That said, Mr. Meade did not then or following take any steps to remove her name from title or otherwise repatriate ownership to him alone.

[87] Mr. Meade did two things near the end of his life that are also telling in determining his intentions for the Property ownership. One, he retained counsel and instructed that the Claimant be served with the Notice to Sever the joint tenancy for the Property dated January 21, 2022. Two, he instructed his counsel to prepare and he duly signed a Will dated February 7, 2022.

[88] What does Mr. Meade signing the Notice to Sever mean? Mr. Meade was seeking to create a divided titled ownership for the Property whereby he would retain a 50% interest and the Claimant would also have a 50% interest. This is strong evidence that Mr. Meade intended the Claimant to have a 50% beneficial interest in the Property when he put her name on title. He was not then claiming sole ownership.

[89] The Will made by Mr. Meade is consistent with and in fact references the Notice to Sever. The Will states:

> I direct that my 50% share (after Severance) in Block 12/3 Parcel 143 with a house situated thereon in Beachettes Subdivision of Montserrat be devised to my wife, JANET DYER-MEADE absolutely.

[90] The Will of Mr. Meade acknowledges his 50% interest in the Property and that the Claimant would also have a 50% interest. This is strong evidence that Mr. Meade intended the Claimant to have a 50% beneficial interest in the Property when he put her name on title.

[91] On the whole of the evidence, it is clear that Mr. Meade intended a gift to the Claimant. Specifically, the evidence establishes that Mr. Mead intended that the beneficial ownership for the Woodlands Property be 50% to him with the remaining 50% to the Claimant by resulting trust. This true, beneficial ownership remained in place at the time of Mr. Meade's passing in priority to any title registration and related right of survivorship. Stated differently, Mr. Meade's estate would retain a 50% beneficial interest in the Woodlands Property regardless of the registered title.

[92] The Court finds that Mr. Meade and the Claimant each held a 50% beneficial ownership of the Woodlands Property. The 50% interest of Mr. Meade formed part of his estate upon his passing and was bequeathed to the Defendant.

[93] Practically speaking, the Court need go no further than the above to determine the interests of the Claimant and the Defendant in relation to the Property subject only to determining the impact of survivorship rights upon those interests.

However, the matter of whether the Defendant had an independent claim to an interest in the Property on the basis of constructive trust principles should also be reviewed.

[94] A constructive trust analysis addresses the relationship between Mr. Meade and the Defendant as it pertains to the Property. The two fundamental elements for a constructive trust are a common intention and detrimental reliance (see: *Grant v Edwards* (1986) 2 All E.R. 426). The burden is upon the Defendant here to provide evidence establishing, on the civil standard, a constructive trust interest in her favour. For the reasons below, the Court is satisfied that she has.

[95] Did Mr. Meade and the Defendant have a common intention that the Defendant would have an interest in the Property?

[96] There was no doubt in the evidence that the Defendant and Mr. Meade had a decades long relationship where they cohabited first in the rented premises in Salem and thereafter the Property leading up to Mr. Meade's passing. I accept that there were one or perhaps more short term breaks during down points in the relationship. That said, the Court is satisfied on the evidence that there was no permanent separation between and/or break in the cohabitation of the Defendant and Mr. Meade up to the time of his passing.

[97] The evidence in support of the depth of their relationship and long term cohabitation comes from the various witnesses. Each of Mr. Lee, Mr. Reuben Meade and Mr. Robinson described them as a committed, loving, long term couple. Each of Mr. Lee, Mr. Reuben Meade and Mr. Robinson testified to the Defendant residing with Mr. Meade prior to and thereafter at the Woodlands Property.

[98] I appreciate that Mr. Lee suggested the Defendant was absent when he visited in 2018, 2019 and 2020. The Defendant agrees she was absent from the Woodlands Property for medical treatment in England when Mr. Lee visited in 2018. She denies being absent thereafter.

[99] Mr. Robinson testified to visiting in person with Mr. Meade at the Property weekly. His recollection was that the Defendant was always present excepting for one

absence although he could not recall when and suggested it was about two weeks in duration. This would roughly coincide with the Defendant's evidence that she was absent only once for an extended period in 2018.

[100] Mr. Reuben Meade testified to telephoning the Woodlands Property weekly to visit with his brother and through that verifying the Defendant's regular presence there.

[101] I accept the evidence of the Defendant, Mr. Reuben Meade and Mr. Robinson that the Defendant was absent from the Property only one time for any extended period.

[102] The Defendant's unchallenged evidence was that she and Mr. Meade discussed the purchase of land to build "our home". They together visited and made the decision to purchase the Woodlands Property after the Defendant rejected another proposed property in Olveston. The tenor of the Defendant's evidence overall was that the Property was mutually intended to be and was in fact their home where they cohabited as a couple for two decades.

[103] Mr. Reuben Meade's evidence was corroborative to the Defendant's where he testified that his brother intended the Woodlands Property to be his and the Defendant's home. We also have Mr. Meade's Will where he names the Defendant as the beneficiary of his interest in the Woodlands Property.

[104] What Mr. Meade said, whether the parties cohabited and for how long are all relevant considerations when determining whether a common intention has been proven. What also drives the analysis is the evidence of contribution to the subject asset by the party seeking a declaration of an interest.

[105] The evidence before this Court was clear that the Defendant made meaningful contributions in kind and financially to the Property. She prepared food for the friends and other persons working to build the residence on the Property (see: *Isadore Browne v Maria Roseta Browne* [1988] ECSCJ No. 4). She worked with Mr. Meade in the catering business with all revenues being provided to Mr. Meade. The Defendant's unchallenged evidence was that these funds were used

by Mr. Meade to purchase the materials to build the residence and for payment of the loan used to finance that build.

[106] The Defendant's unchallenged evidence was that she was the primary "breadwinner" following Mr. Meade's serious stroke in 2011 until his recovery in or around 2014. The evidence before the Court was clear that Mr. Meade was diminished physically and by relation in his ability to work even after 2014. Flowing from this, the Court infers that the Defendant was required to make continuing financial contributions to the household, including Property related expenses.

[107] The Court finds that the Defendant made substantial financial and in kind contributions to the Property, in particular towards the loan and other costs of building the residence on the Property following the purchase of the land in 2002 and over the following two decades of her relationship with Mr. Meade leading up to his passing. This informal arrangement between cohabiting partners is not unusual and is legally significant. In fact, the Defendant continued her contributions after Mr. Meade's passing, namely by finishing the veranda for the residence on the Property.

[108] Based on the evidence above, the Court is satisfied that Mr. Meade and the Defendant had a common intention for the Defendant to have an interest in the Property.

[109] Did the Defendant act to her detriment in reliance upon a common intention with Mr. Meade that they would together share an interest in the Woodlands Property? Easily the answer is yes.

[110] As noted above, the Defendant made significant financial and other contributions to the Woodlands Property without being named on title or otherwise being secured. In particular, she worked with Mr. Meade in the catering business with all revenues being provided to Mr. Meade to be used towards the building materials and loan for the Woodlands Property. Why else would she do this except on the basis of an intention shared with Mr. Meade for this Property to be

their home? Clearly, she would not and no doubt would have channeled all of her resources into her Nixon property instead of having to obtain a large loan.

[111] Having determined a common intention and detrimental reliance, the Court next must make an assessment as to what share the Defendant's contributions entitle her to?

[112] In *Ulrich v. Ulrich and Felton* 1968 WLR 180 at 189, Lord Diplock offered the following guidance:

"They pool their savings to buy a house on mortgage in the husband's name or in joint names and to furnish and equip it as a family home. They meet the expenses of its upkeep and improvement and the payments of the instalments on the mortgage out of the family income, to which the wife contributes so long as she is earning. In such a case, the prima facie inference from their conduct is that their common intention is that the house, furniture and equipment should be family assets in which each is entitled to an equal share."

[113] Similar to the above, the ECSC Court of Appeal in *Neville Kirwan v Mildred Kirwin* (delivered orally December 4, 2013) confirmed that the general rule in equity was to provide each party an equal share in the subject property.

[114] The calculation for an equitable interest is these circumstances is nothing more than a best approximation on the available evidence. The Defendant and Mr. Meade, like most couples, did not keep a detailed ledger of their specific contributions. That said, the precedents noted above suggest the starting point in circumstances such as here is to provide an equal share. That outcome is consistent with the overall evidence. Mr. Meade and the Defendant each made substantial contributions to the Woodlands Property, which they both considered their shared home and where they lived as a couple for two decades.

[115] As noted, a constructive trust analysis addresses the relationship between Mr. Meade and the Defendant as it pertains to the Property. The Defendant can only share to the extent that Mr. Meade had an interest in the Property. The Court has above determined that Mr. Meade held a 50% interest in the Woodlands

Property. As such, the Defendant would be entitled to an equal, one-half share of that interest, namely a 25% interest in the Property.

[116] Mr. Meade's 25% interest formed part of his estate when he passed and was by his Will bequeathed to the Defendant. Again, this results in the Defendant having in total a 50% beneficial interest in the Woodlands Property (i.e. her 25% interest by constructive trust and her 25% from Mr. Meade's estate).

[117] The only remaining issue to address is whether the Defendant's beneficial interest has priority over the Claimant's right of survivorship through joint registered title with Mr. Meade. The Court is persuaded the Defendant's trust interest was not extinguished by the right of survivorship engaged when Mr. Meade passed.

[118] The following sections of the Montserrat *Registered Land Act* ("RLA") are relevant to this issue:

Section 23 provides as follows:

"Subject to the provisions of section 27 of this Act [voluntary transfer] 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,

Provided that—

(i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee"

Section 38(2) provides as follows:

"Where the proprietor of land, a lease or a charge is a trustee, he shall in dealing therewith be deemed to be absolute proprietor thereof, and no disposition by such trustee to a bona fide purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust."

Section 101 provides as follows:

"(1*) Where the land, a lease or a charge is owned jointly, no proprietor is entitled to any separate share in the land and consequently:*

(a) *Dispositions may be made only by all the joint proprietors, and*
(b) *On the death of a joint proprietor, his/her interest shall vest in the surviving proprietor or the surviving proprietors jointly.*

(3) *Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument."*

Section 122(3) provides as follows:

"Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trusts, but for the purpose of any registered dealings he shall be deemed to be the absolute proprietor thereof, and no person dealing in good faith for valuable consideration shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnity under this Act."

[119] The *RLA* clearly recognizes and preserves beneficial, trust interests in land as against the registered title holder. Specifically, the *RLA* states that the registered title holder is subject to the terms of any trust. The *RLA* simply says that third parties transacting with a registered title holder for value are not bound by the trust terms.

[120] Any legislation seeking to override beneficial, trust ownership rights would need to express this intention unambiguously. Obviously, that is not the case with the *RLA*.

[121] The Claimant is presently the sole registered title holder by right of survivorship upon Mr. Meade's passing. This means that, except for the Caution registered, she has the right to transact with the Property, including selling it to a third party for value. Any third party purchaser for valuable consideration would not be subject to any trust interests upon transfer of the Property. However, the Claimant remains subject to the Defendant's 50% beneficial interest. Her beneficial interest was not extinguished upon Mr. Meade passing and related right of survivorship flowing to the Claimant.

[122] Another issue raised in this trial was the impact on the registered title for the Woodlands Property of Mr. Meade serving the Notice to Sever. This issue is now

moot given the determinations already made. Regardless, the Court will offer its view, clearly now in obiter, for completeness.

[123] The RLA has a set process for severance of titled joint proprietorship. This process is voluntary, which seems less than ideal. Each joint proprietor must sign an instrument confirming agreement to sever the joint tenancy and for title to thereafter reflect that the titled owners hold his/her interest as tenants in common. This cannot be done unilaterally. Failing agreement, a joint title holder would be left to make application to the court to obtain an order severing the joint tenancy. There was no agreement here. Mere service of the Notice to Sever did not affect the registered title for the Property.

[124] The final issue raised in this case was the Claimant's request for the return of furnishings she states are hers located at the Woodlands Property. The Defendant took the position that she "did not really wish to argue" over the Claimant's request for the return of the furnishings she claims. This presents as a reasonable concession given the items are now approaching two decades old and presumably of limited value.

[125] Regardless of the Defendant's concession, the Court is satisfied with the Claimant's testimony respecting the television, refrigerator, washing machine, couch and cooker. The Claimant identified these furnishings as being located at the Woodlands Property and their provenance. She brought them to Montserrat when she relocated from Boston in 2008. It is entirely unsurprising that she was unable to produce receipts for these now 16 years later. The Claimant did not provide any specific testimony with respect to any other furnishings such that the Court has no meaningful and insufficient evidence to support her claim for those other items.

[126] The Claimant shall be entitled to the return of her identified furnishings, namely the television, refrigerator, washing machine, couch and cooker.

Conclusion

[127] There is a difference between the legal ownership and beneficial ownership of property. They can be but do not have to be held by the same party. Here, the legal and beneficial ownership are not held by one party alone.

[128] The whole of the evidence directs this Court to the finding that the Defendant has a 50% beneficial interest in the Woodlands Property. That interest permits her to occupy the Property and to share in the proceeds of any disposition.

[129] The Claimant is the sole registered, legal owner of the Property. She also has a 50% beneficial interest in the Property.

[130] The Claimant shall be entitled to the return of her identified furnishings located at the Property, namely her television, refrigerator, washing machine, couch and cooker.

IT IS HEREBY ORDERED THAT:

1. The Defendant has a 50% beneficial interest in the Woodlands Property.

2. The Claimant is the sole registered, legal owner of the Property. She also has a 50% beneficial interest in the Property.

3. The Claimant shall be entitled to the return of her identified furnishings located at the Property, namely her television, refrigerator, washing machine, couch and cooker.

4. The parties should attempt to resolve the issue of costs between them. If they are unable to then either party may contact the Court to have this matter returned before me on a date to be scheduled to speak to the issue of the costs of this trial and action along with any other issues arising from this Judgment.

The Hon. Dale Fitzpatrick
(Ag) High Court Judge

By the Court

REGISTRAR