

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO.: ANUHCV2016/0461

IN THE MATTER of the Married Woman's Property Act CAP 267

And

IN THE MATTER of an Application for Declaration of Interest in Property

BETWEEN:

SHARON KING-FARRELL

Claimant

And

OSWALD FARRELL

Defendant

APPEARANCES:

Mr. Lawrence Daniels for the Claimant

The Defendant *pro se*

2020: November 26

2024: May 16

JUDGMENT

Nature of the Proceedings

- [1] **PHILLIP, J:** This is a claim by Mrs Sharon King-Farrell ("the claimant") against her husband, Mr Oswald Farrell ("the defendant"), to add her name to the title as a co-owner of their marital home situated at Matthews and described in the Register of Lands as Registration Section: St. Phillip North; Block: I5 2185B; Parcel: 338 ("the property"). It is important to immediately note that these are not matrimonial proceedings, so the law and principles applicable to ancillary relief matters do not necessarily apply.

[2] By fixed date claim form filed on 8th August 2016 and amended on 28th February 2017 with a supporting affidavit filed on 8th August 2016, the claimant asserted the defendant held the property on trust for her when he failed or refused to add her name to the title of the property even though she is the only person paying the bank mortgage of the house that they built together on the property. Thus, she has suffered loss and damages and continues to suffer loss and damages, and claims:

- “1. A Declaration that the property situated at Matthews and described in the Register as Registration Section: St. Philips North; Block 15 2185B; Parcel: 338 are beneficially owned by the Claimant and Defendant in equal shares.
2. **An Order** that the property described in the Registry of Lands as **Registration Section: St. Philips North; Block#: 15 2185B; Parcel# 338** is held by the Defendant on Trust for the claimant as a co-owner in equal shares;
3. **An Order for Rectification of the Register** that the claimant’s name be added to the Title as a co-owner of the said property described in the Register of Land Registry as **Registration Section: St. Philips North; Block#: 15 2185B; Parcel# 338** by virtue of section 121 of the Registered Land Act CAP 374 of the Laws of Antigua and Barbuda;
4. **A Declaration** that the claimant is entitled to Damages for all monies paid for legal fees in the sum of \$2,500.00;
5. **A Declaration** that the claimant is both an equitable and legal owner of the said parcel of land.
6. Prescribed costs;
7. Interest pursuant to statute section 27 of the Supreme Court Act CAP 143;
8. Any other relief this Honourable Court deems fit.”

[3] The defendant filed an affidavit in response to the claim on 18th November 2016 and a supplemental affidavit in response to the amended fixed date claim form on 8th March 2017. He contends that:

1. He did not acquire the land comprising the property but was land acquired by his grandfather, the late Charles Farrell, who died in New York in 1991.
2. He commenced the construction of the house on the property in 2000 and received assistance from his mother, aunt and uncle to construct the house.
3. He paid the greater part of the money so far on the mortgage, apart from owning the land the house is built on.

The defendant asserted that the claimant had not contributed financially or otherwise in the amount that would make her a part-owner of the property or would justify adding her name to the land certificate.

- [4] At the end of the trial of the claim on 26th November 2020 (the adducing of the parties' evidence and the closing submissions of counsel for the claimant and the defendant in person), the defendant resiled from his initial position and acknowledged an interest for the claimant in the house, the subject matter of the claim, and indicated a willingness to sever the portion of land on which the house stand and to add the claimant's name to it at the Land Registry. The claimant accepted this proposal, and the court reserved its judgment to a date after 1st April 2021 to be notified by the court office to facilitate discussion of the parties toward the amicable resolution of the matter. With the liberty to apply, the parties agreed to have discussions toward an amicable resolution of the matter as indicated in the proposal above and to file a consent position for the approval of the Court or a notice of discontinuance by 31st March 2021.
- [5] By an email from the registrar of the court dated 18th March 2024, I was informed, among other things, that the parties have been unable to arrive at a settlement; therefore, they now required the written reserved judgment.

The Evidence

- [6] The claimant filed a witness statement on 10th January 2019, and the defendant on 31st January 2019. Most of the evidence in the case is undisputed:
1. The parties have known each other since 1986. They formed a relationship, producing three children: Shannon Farrell, Oslyn Farrell, and Odlyn Farrell. The claimant's earlier son, Clint Allen, was also a child of the family. The parties married on 20th May 2006 at the All Saints Anglican Church.¹
 2. On 7th September 2000, the defendant obtained the parcel of land² comprising the property as a gift under the Will of his grandfather, the late Charles Farrell, who died in New York in 1991. A three-bedroom, two-bathroom stone/concrete house now stands on that parcel of land, which they occupied since May 2006, and the claimant and their children continue to occupy to this present time.

¹ The claimant produced a copy of the marriage certificate

² The claimant produced a copy of the land certificate

3. The defendant stated that during the construction of the house, he obtained a gift of EC\$70,000.00 from his mother, Ms. Audrey James, who then lived in England to the present. His aunt, Mrs. Icilma Farrell and his uncle, Winston Farrell, both residing in the United States, sent him EC\$15,000.00 and EC\$10,000.00, respectively, to assist in constructing his house. His aunt also supplied him with substantial materials such as \$1,500.00 cement building blocks, large amounts of aggregate, etc. The claimant admitted in cross-examination that the defendant's mother and aunt did assist with the construction; however, she did not say how much but indicated they did so because of her and the children.
4. The house was built piecemeal over a period of five years between 2000 and 2005. He had about \$75,000.00 saved up in the Antigua Commercial Bank then. When the construction began in 2000, the defendant secured the services of Elrie Farrell, an architect; Carlton Spencer, a backhoe operator who dug the foundation; Enoch Simon, a carpenter; and Daren Strand, who did the electrical work and paid them out of his own resources. The claimant admitted during cross-examination that the defendant paid when they were doing the foundation and paid four workmen to build up the body of the house.
5. In 2006, the defendant had a mortgage loan with RBTT Bank Caribbean Limited (formerly Caribbean Banking Corporation Limited) secured by a charge on the property. On 27th February 2008, the charge was transferred to the Royal Bank of Canada in consideration of \$162,000.00 with a principal sum of \$151,873 and interest of \$4,370.82 owing. On the same date, the defendant, as the charger, signed a Variation of Charge to Royal Bank of Canada from \$161,000.00 to \$241,000.00 with a monthly repayment of \$1,761.00, and the claimant and her son, Clint Allen, signed as guarantors.³
6. The claimant was employed at Medical Benefits as a supervisor, and the monthly mortgage payments were deducted directly from my salary and paid to the loan account number 742-578-8 at Royal Bank of Canada.⁴ Yet, the defendant never included her name on the property as a co-owner, notwithstanding that her salary alone paid the mortgage consistently every month, along with the arrears and the insurance.

³ The claimant produced a copy of each of the Transfer of Charge and the Variation of Charge

⁴ Copies of my salary slips and the bank statement dated 29th January 2016 covering the period of 31st October 2015 to 29th January 2016 were produced by the claimant

7. The defendant admitted in cross-examination that from 2008/2009 to the present (2020), the claimant continued to make the mortgage payments for 11 to 12 years, so she has an interest in the house. Still, although admitting that the house cannot be removed from the land, he objected to the claimant's name being put on the land. It is an inheritance and he will have to let it go among his children, including other than the claimant's children.
8. The defendant stated he worked independently as a building contractor, and when the economic downturn came in late 2008 to 2009, the claimant agreed that because she earned a steady salary, she would pay the mortgage sum of \$1,761.00 per month and that he would pay for all other expenses such as utilities, groceries and all school fees for Oslyn Farrell during her tenure at the Antigua Hospitality Training Institute which amounted to \$1,200.00 per term. Oslyn Farrell attended the Hospitality Centre for three years.
9. During cross-examination, the claimant admitted that the defendant used to pay the electricity bills; however, after he moved out of the marital home, he said who was occupying the house must pay the bills. She also acknowledged that even when the defendant was not living at the marital home, he would go to shop, and this continued until he reduced the shopping until he stopped.

[7] The parties disputed whether the children of the family assisted with the construction. The claimant insisted that at the time of the construction of the house, our children were ages 17, 13, 5 and 3 years old and Clint and Shanon both assisted in the sifting of the sand alongside her and the defendant and with some paid workmen including Elvis, Casper. The children and her, along with the defendant, worked both day and night, including weekends, sifting sand on the construction of the house, which included cutting steel and helping to lay blocks. In cross-examination, she said Clint helped mix concrete and held up rafters. On the other hand, the defendant countered that being a builder, he and other workmen friends of his did a substantial amount of work in constructing the house. None of the children performed any work on the house nor did Clint Allen.

[8] Further, the claimant stated that the bank wanted another person as a guarantor; therefore, they agreed to add her son, Clint Allen, given that he already had a loan with the bank. The loan was extended to pay off Clint's loan, and he acted as a guarantor along with her. Clint continued to pay the balance that was due on his loan. However, the defendant disputed this and stated that Clint

never contributed any money to the mortgage repayment despite the agreement to pay \$1,000.00 monthly until he paid off the amount borrowed for his car.

The Legal Principles of Constructive Trust

[9] In **Stack v Dowden**,⁵ the House of Lords reviewed the law relating to constructive trusts where Baroness Hale of Richmond gave the leading opinion and stated (paras 56, 60, 61 and 62) 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.” [underline added]

“60. ... 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, it emphasizes that 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.”

[10] Accordingly, the claimant must prove a shared (or common) intention for her to share or have a beneficial interest in the property different from the legal ownership on the Land Register. In other words, she must prove that the parties intended to share the beneficial interest in the property, in what proportion the parties intended to share the beneficial interest in the property, and that she had detrimentally relied on this common intention.

⁵ [2007] UKHL 17

- [11] The court adopts a holistic approach that considers the parties' entire course of conduct regarding the property to ascertain the parties' common intention of ownership. It may be an expressed intention of the parties or inferred or imputed from the parties' conduct concerning the property.

Discussion

- [12] I now propose considering the claimant's claims or prayers in her amended fixed-date claim form quoted above (para [2]). Prayers 1, 2 and 6 will be dealt with together as they essentially raise the same matters of establishing the claimant's interest in the property. Similarly, prayers 5 and 8 are interrelated in that payment of interest would invariably arise and flow from an award of damages.

Declaration of Ownership and Trust Order of the Property in the Parties in Equal Shares

- [13] Upon reviewing the evidence, there is no denying there was a shared or common intention between the parties that they would own the marital house together. The common ground is that the parties had a common-law union that produced three children before the land, devised for the defendant, was transferred to him on 7th September 2000. The construction of the house commenced in 2000 on a piecemeal basis over the years with assistance from the defendant's relatives, funds from the defendant's work and the loan from RBTT Bank in 2006, which the claimant admitted in cross-examination put the house in a liveable condition. In May 2006, the parties also married and moved into the marital home on the property until the defendant left due to certain restraining orders.
- [14] While it is clear that the lion's share of the initial funds for the house came from the defendant and his relatives, I accept the claimant's evidence that she and the children assisted with the work at the construction site to the extent that they could. Further, the unchallenged evidence was that in 2008, after the refinancing with the Royal Bank of Canada, the claimant paid the mortgage loan solely while the defendant took on the other financial responsibility of the home. The claimant continues to pay the mortgage even now as the defendant has relinquished most, if not all, of his financial responsibilities to the marital home.
- [15] In the circumstances, coupled with the defendant's admission that the claimant has an interest in the house, I am satisfied that there was a common intention that the parties would share the marital house equally and that the claimant has and continues (by the payment of the mortgage) to act to her detriment. I, therefore, find that the claimant has an undivided half-share in the marital house.

[16] Having determined that there was a common intention between the parties that the claimant shall share or have an equal interest in the marital house and the fact (which the defendant acknowledged) that the house cannot be removed from the land, the defendant would be estopped from denying the claimant's interest or share in the land because whatever buildings or other things permanently affixed to the land becomes part of it.⁶ Thus, the common intention to share in the concrete house (that cannot be removed) must equally be a common intention to share the land on which the house was erected. It gives rise to proprietary estoppel in the claimant's favour as it would be detrimental to her and unconscionable for the defendant to deny her right to legal co-ownership of the marital house.⁷

[17] However, there is no evidence that the claimant evinced an intention to share the entire property. Indeed, there was no mention of the other parts of the land other than the marital house erected on the land. The property comprises approximately 1 Acre of land, which is significant in the context of an average family home in Antigua and Barbuda. Hence, I have determined that the claimant's interest in the property would concern the marital home and only the land where it stands, with reasonable yard space that can be partitioned and delineated from the rest of the property.

Rectification of the Register

[18] On reading claims 3 and 4, it is clear that the claimant intended it to be a single claim or prayer seeking the rectification of the Registered Land Register to add her name as a co-owner of the property under section 121 of the Registered Land Act (as amended)⁸ ("the RLA"), which prescribes:

"Where the Crown or any person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by the order or certificate of sale or such evidence as he may require, register the Crown or the person entitled, as the proprietor."

⁶ Section 2 (interpretation of land) of the Registered Land Act (as amended), CAP 374 of the Laws of Antigua and Barbuda

⁷ FBO 2000 (Antigua) Limited v Vere Cornwall Bird Jr. et al., Antigua And Barbuda Civil Appeal No.30 of 2003 (10th October 2005); Nicholas Lansiquot v Ignatius Leon et al., Saint Lucia Civil Appeal No.29 of 2005 (2nd July 2007)

⁸ CAP 374 of the Laws of Antigua and Barbuda

- [19] Evidently, section 121 of the RLA does not contemplate this court making an order directing the Registrar to rectify the Register; rather, it expects the claimant to apply to the Registrar with the requisite evidence (in this case, the order of the court declaring her interest in the property as determined above) to have her registered as a proprietor reflecting her interest in the property. Consequently, I declined to make the order sought.

Damages & Interest

- [20] The claimant in prayer 5 seeks a declaration that she was entitled to damages for all monies paid for legal fees in the sum of \$2,500.00. However, apart from this prayer in the amended fixed date claim form, there were no particulars in the claimant's supporting affidavit or witness statement.

- [21] At best, this would be a claim for special damages, which a claimant must specifically plead and prove to reasonable certainty. In ***Jamalco (Clarendon Alumina Works) v Lunette Dennie***,⁹ Phillips, J.A. in the Jamaica Court of Appeal observed (para. 57) that:

“The standard of proof is therefore not one of certainty, but one of reasonable certainty, which only demands evidence in respect of which existence of damage can be reasonably inferred. The dictum of Bowen LJ in *Ratcliffe v Evans* [1892] 2 QB 524 at page 533 is clear on the point and instructive. He stated:

‘In all actions accordingly on the case where the damage actually done is the gist of the action, the character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.’”

- [22] The claimant provided no particulars of to whom she paid the alleged legal fees or for what services or tasks and has adduced no proof of payment. This lack of evidence is even more telling as the damages sought concern legal fees that are invariably documented, where there would have likely been at least a receipt, engagement letter, or some other record. Thus, the claimant cannot succeed in the claim or prayer for damages.

⁹ [2014] JMCA Civ 29

[23] As intimated above, the court invariably grants an award of interest to compensate a successful party for being kept out of the monies or other damages to which they were entitled. It is payable from a specified date to usually the date of payment. Accordingly, as the claimant did not succeed in her claim for damages, there can be no award of interest and this prayer is refused.

Costs

[24] The claimant was substantially successful in the claims sought, albeit the orders granted were not in the identical terms as prayed. Therefore, she would be entitled to prescribed costs for an unquantified claim of \$7,500.00.

Conclusion

[25] For the reasons discussed above, IT IS ORDERED AND DECLARED THAT:

1. The claimant and the defendant are the legal and beneficial owners in equal shares of the marital house with reasonable yard space situated at Matthews and described in the Register as Registration Section: St. Philips North; Block 15 2185B; Parcel: 338.
2. The parties shall jointly engage and pay a licenced land surveyor to partition and prepare a survey plan delineating the marital house with reasonable yard space from the rest of the property as mutually agreed and failing agreement with liberty to either side to apply to the court to effect this order and or approve the proposed survey plan.
3. The defendant shall pay the claimant prescribed costs of \$7,500.00.



Justice Rohan A Phillip
High Court Judge

By the Court

Registrar