

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0048 (formerly GDAHCV2021/0245)

BETWEEN:

PAUL CHRISTOPHER

Claimant

and

JUDLYN SMITH

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Jasmin Redhead for the Claimant

Ms. Hazel Hopkin for the Defendant

2023: December 12;
2024: March 27

JUDGMENT

- [1] **ACTIE, J.:** This case raises the issue of constructive trust in the determination of whether the claimant holds a beneficial interest in property situate at Bailles Bacolet, St. David, which is registered in the name of the defendant.

Brief Facts

- [2] A brief outline is necessary to put the issue in perspective. The claimant and defendant were in an intimate relationship, the period of which is in dispute. Nevertheless, during that relationship, a dwelling house was constructed on land which the defendant is the registered title owner.
- [3] It is the defendant's evidence that the land was purchased in 1998 prior to the commencement of their relationship. In 2001, the parties obtained a joint

mortgage from the Grenada Development Bank (hereafter referred to as “GDB”) to which the defendant’s previous outstanding mortgage balance of \$45,000.00 was included, to construct the dwelling house on the lot of land.

- [4] In 2005, the parties obtained a refinance of the mortgage with the National Insurance Board (hereafter referred to as “NIS”) for the construction of a two-bedroom rental apartment at the downstairs of the dwelling house.
- [5] All the mortgage payments from the different lenders were by way of salary deductions from the defendant’s salary. However, the claimant states that he paid fifty percent (50%) of the mortgage obligation.
- [6] The relationship between the parties came to an end sometime between 2009/2010, however the claimant continued to reside in the dwelling house for approximately ten(10) years, until he eventually moved out completely in 2021.
- [7] The claimant claims that there existed a common intention between the parties, and that the defendant holds the property on trust as he is beneficially entitled to fifty (50) percent of the property and the rental income received from the apartments.

Claimant’s Case

- [8] It is the claimant’s case that he shared an intimate relationship with the defendant for approximately fifteen years from 1996 to 2011, and that it was sometime in the years 1999 to 2000 that he and the defendant agreed to construct a dwelling house together on the lot of land.
- [9] The claimant contends that the defendant is currently in receipt of rental income from the property and the sole person benefiting therefrom. The claimant avers that the monthly rental income received by the defendant for the apartment for the period 2004 to 2006 was \$700.00, for the period 2007 to 2010, \$1,000.00, and for the period 2016 to present the monthly income received is \$800.00.

- [10] The claimant further contends that he was responsible for the payment of water, internet and telephone bills, while the defendant was responsible for the electricity bill. He states that both parties contributed equally towards the purchase of food.
- [11] The claimant contends that the parties equally contributed towards the purchase of the property and the construction of the house with the common intention that they will both have a beneficial interest in the property.
- [12] The claimant asserts that the defendant would be unjustly enriched, and it would be inequitable for him not to be duly compensated for his contributions towards the property.

Defendant's case

- [13] The defendant denies that the claimant is the beneficial owner of fifty percent (50%) share of the property. The defendant asserts that the purchase of the lot of land was in 1998 prior to the commencement of her relationship with the claimant. The defendant asserts that their relationship was for a period of nine years, beginning in or about the year 2000 and ending in 2009.
- [14] The defendant admits that the claimant co-signed the mortgage with the GDB to construct the house in 2001 but avers that all payments towards the mortgage were deducted from her salary. The defendant admits to receiving \$1,250.00 monthly from the claimant which she states was to assist in the payment of bills, and out of love and affection.
- [15] The defendant contends that the apartment which was built at the downstairs of the primary building was not always occupied with tenants to have been generating income. The defendant further avers that the rents received were used to maintain the property and to finance the defendant, given that she was servicing the home related loans.
- [16] The defendant avers that she was responsible for the electricity, cable and part of internet bills, while the claimant was responsible for the water, telephone and part

of internet bills. The defendant further states that the claimant contributed \$250.00 for food monthly, although their food bill was in excess of \$800.00 a month.

- [17] The defendant asserts that the claimant was not paying 50% of the mortgage as alleged, and that the issue of compensation for 50% share in the property was only raised with her in a letter written to the defendant by the claimant's attorneys.

Legal Analysis

Whether the claimant holds an equitable interest in the property

- [18] The case of **Hussey v Palmer**¹ establishes the principle that where it is inequitable on the grounds of justice and good conscience that the legal owner of property should take the property for themselves and exclude another from it, the law would impose a trust for the other's benefit. The trust may arise at the outset when the property is acquired or later on, as the circumstances may require.

- [19] In this case it is the evidence that the defendant purchased the land prior to the commencement of the relationship and is the registered paper title holder. In **Jones v Kennot**² it was held that:

"Where the property is registered in the sole name of one party, there is no presumption of joint beneficial ownership. In determining what share each party is entitled to, the court must consider the whole course of dealing between them in relation to the property and determine what is fair. In doing so it must be noted that financial contributions are only one of the relevant factors".

- [20] Moreover, in the seminal case of **Stack v Dowden**³, the House of Lords stated as follows:

"Just as the starting point where there is sole legal ownership is sole 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."

¹ [1972] 3 All ER 744

² [2011] UKSC 53.

³ [2007] UKHL 17

[21] The claimant contends that he has fifty (50) percent beneficial interest in the property and that the defendant is holding the property on a constructive trust in equity on his favour. Considering all the evidence, the court accepts the evidence that the lot of land was purchased in 1998 by the defendant prior to the commencement of the relation with the claimant in or about 2000. Their relationship escalated to a commitment to build a home together. A joint mortgage taken in 2001 for the construction of the dwelling home incorporated the balance of the purchase price of the said land. Further refinancing for the construction of the apartments was co-signed by both parties although the mortgage payments were all deducted from the defendant's salary.

[22] In **Grant v Edwards**⁴ it was held that a constructive trust is demonstrated by a common intention that parties should both have a beneficial interest in property and also that the claimant had acted to his detriment on the basis of that common intention, and on the belief that by so acting he would acquire a beneficial interest. The claimant may prove that a constructive trust arises by demonstrating that the legal owner induced him to believe that he would be entitled to a share in the ownership by an (i) express agreement or (ii) contribution to the acquisition of the property⁵.

[23] In the instant case considering all the evidence, it is pertinent for the court to examine whether the claimant satisfies the requirements for a constructive trust.

Common Intention

[24] The House of Lords in the case of **Lloyds Bank Plc v Rosset & Anr**⁶, in resolving a dispute between two persons who shared a home in circumstances where one party was entitled to the legal estate and the other party claimed to be entitled to a beneficial interest, held that the fundamental question to be resolved was whether, on the basis of evidence of express discussions between the partners

⁴ [1986] 2 All ER 426

⁵ Gissing v Gissing [1971] AC 881

⁶ [1990] 1 All ER 111

and independently of any inference to be drawn from their conduct in the course of sharing the property and managing their joint affairs, there had been at any time prior to the acquisition of the property, or exceptionally at some later date, any agreement, arrangement or understanding reached between them that the property was to be shared, beneficially coupled with detrimental action or alteration of position on the part of the person claiming the beneficial interest. Failing that, the question was whether there had been direct contributions to the purchase price by the person claiming the beneficial interest from which a constructive trust could be inferred.

[25] In the Privy Council decision in **Abbott v Abbott**⁷, it was emphasized that the parties' whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to its ownership. The Board favoured the reasoning of the trial judge Mitchell J., who relied on the fact of the payment of couple's income into a joint account from the time of the acquisition of the property, as well as the fact that the husband's mother intended that the land should be a gift to both parties, to declare a common intention.

[26] Furthermore, in **Stack v Dowden**⁸, Lord Walker remarked:

"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".

[27] The claimant argues that it was always understood by him through discussions, conduct and course of dealings that the house on the property would belong to the parties jointly. Though there is a dispute as to when the relationship between the parties commenced, the court accepts that in the year 1998 the defendant solely obtained a loan to purchase the lot of land in Bailles Bacolet, however in 2001, the parties jointly obtained a loan from the GDB to construct a two-bedroom house on the property which incorporated the outstanding balance remaining on mortgage in relation to the land purchased by the defendant.

⁷ [2008] 1 FLR 1451

⁸ [2007] UKHL 17

[28] The court finds that claimant had no direct contribution or involvement in the acquisition of the lot of land. However, the conduct of the parties in obtaining joint loans and refinancing suggests a common intention to build their home on the parcel of land, owned by the defendant. Conversely, there is no evidence of the share agreement between the parties in relation to the dwelling house especially in light of the fact that the defendant who purchased the land paid the mortgage by way of salary deduction.

[29] In **Lloyds Bank Plc v Rosset & Anr**⁹, it was stated:

“In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation, direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do.”

[30] The case of **James v Thomas**¹⁰ demonstrates that a judge’s aim should be to find an agreement that the parties made rather than to impute an agreement to them. A judge cannot ascribe intentions which the parties never had.

[31] Counsel for the claimant relies on the Guyana Court of Appeal case of **Abdool Hack v Rahieman**¹¹, wherein the parties were not married but lived together continuously over a period of 28 years in a de facto marital relationship. The appellant made the initial down payment and took out a mortgage which was repaid by his salary deductions. The respondent was a pedlar who operated a cafeteria, and from the profits of her business she made substantial contribution to the housekeeping expenses. There was no evidence of an express agreement or declaration as to the share of the parties. The judge found nevertheless that the respondent’s contributions to the housekeeping expenses were directly

⁹ [1990] 1 All ER 111

¹⁰ [2007] EWCA Civ.1212

¹¹ (1977) 27 WIR 109

referable to the acquisition of the home as they enabled the appellant to pay the mortgage instalments.

[32] Although this case assists the claimant, it must be juxtaposed with the current legal principles which apply to constructive trusts. **Lloyds Bank Plc v Rosset & Anr**¹² is the leading authority on constructive trusts, and is clear on what is acceptable for the creation of a constructive trust following the acquisition of property. As indicated therein, direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments is the acceptable proof of the existence of a common intention. The court may also consider indirect financial contributions to the mortgage instalments, payment for repairs or improvements to the property or in exceptional circumstances, non-financial contributions¹³.

[33] The court must also consider that in **Burns v Burns**¹⁴, Lord Justice Fox stated that a:

“common intention may be inferred where there has been a financial contribution, direct or indirect, to the acquisition of the house. But the mere fact that parties live together and do the ordinary tasks is, in my view, no indication at all that they thereby intended to alter the existing property rights of either of them.”

[34] The evidence before the court in the extant case as it relates to an alleged common intention that the parties share a beneficial interest is that they jointly refinanced the mortgage on the property on two separate occasions: the first time to build downstairs apartments for rent, and the second time to enhance the living quarters upstairs.

[35] There is also evidence of deposits made by the claimant to the parties' joint account for the rented premises, up until 20th May 2010. The amounts deposited by the claimant over the years included \$18,500.00 on 20th August 2009, and \$1,000.00 on 11th September 2009, 8th October 2009, 4th December 2009, 6th January 2010, 10th February 2010, 15th April 2010, and 20th May 2010. The

¹² [1990] 1 All ER 111

¹³ **Burns v Burns** [1994] 1 All ER 244

¹⁴ [1994] 1 All ER 244

claimant withdrew \$5,000.00 from the joint account on 23rd June 2010. The evidence shows that the deposits by the claimant in the sum of \$1,000.00 represented the rental income of the downstairs apartment on the property.

- [36] The claimant argues that he gave the defendant approximately \$750.00 monthly representing his half of the mortgage payment and related expenses. It is also the claimant's evidence that he directly paid for utility bills and other household expenses. This is not proven on the claimant's documents before the court. However, it is admitted by the defendant in pleadings that the claimant was responsible for the water and telephone bills, and partly the internet bill. In addition, the claimant asserted that the parties jointly purchased furniture for the property. This is not supported by the evidence of the claimant, and the defendant produces evidence to the contrary through the testimony of witness Elsa Mason.
- [37] The burden rests on the claimant to show that a common intention existed to equally share in the property. It is the evidence that the claimant remained in occupation of the said premises in excess of ten years after the breakdown of the relationship. The claimant did not provide any evidence of contributions made towards the mortgage during that period. The claimant made reference to the rental income received which was collected by the defendant.
- [38] The court also gives little weight to the attempt of the claimant to pay half of the mortgage instalment after vacating the disputed property, by issuing a cheque in the sum of One Thousand and Thirty-Four Dollars (\$1,034.00) to the defendant on 25th March 2021. This payment was made before the extant claim was filed and shortly after the claimant issued a pre-action letter to the defendant seeking to be paid his share of the equitable interest in the disputed property.
- [39] In **Hilton Wheeler and Diane Walters**¹⁵, Justice Boodoosingh (as he then was) ruled that the defendant's hurried activity in respect of the property in dispute when litigation was imminent could not be used to sway the court to make an award based on sympathy.

¹⁵ CV 2011-1958

[40] Consequently, the court must decipher whether the following proven conduct of the claimant demonstrates that there was a common intention to alter the property rights of the defendant:

- (1) Being a signatory to subsequent mortgages relating to the property;
- (2) Being a signatory to a joint account with the defendant where rental income of the property was deposited; and
- (3) Payment of utility bills.

[41] In **Paulette Maduro v Elliot Walwyn Brewley**¹⁶ Ellis J. stated thus:

“Where the property was acquired before the relationship began, the cases disclose that it is much more difficult to establish an inferred common intention. Where a claimant asks the court to infer an agreement from contributions to the acquisition or improvement of the property made after the date of purchase, courts have been increasingly more flexible, crediting indirect financial contributions to the payment of household expenses which have permitted the owner to make mortgage payments. However, it is also clear that the mere fact that a financial contribution has been made does not guarantee that a common intention will be inferred. No constructive trust will arise if the contribution is made in circumstances that demonstrate that there was no intention on the part of the contributor to obtain an interest in the property. A common intention will not be inferred if the parties merely do what spouses or partners would ordinarily do.”

[42] The court, considering all the evidence and the conduct of the parties, is of the view that there was a common intention for the claimant to have had a beneficial interest in the dwelling house, subsequent to the defendant's acquisition of the land. The claimant has an interest in the property by his indebtedness and indirect financial contributions towards utility expenses assisted the servicing of the mortgage payments. The court is fortified in its view by the evidence of the defendant that even after the breakdown of their relationship she allowed, without contest from the defendant, the claimant to reside on the property for over a decade.

¹⁶ BVIHCV2016/0147

Detrimental Reliance

- [43] The claimant must now establish that he has acted to his detriment in reliance of such common intention. Lord Bridge in **Lloyd's Bank v Rosset**¹⁷ explained the position in the following terms:

“once it has been shown that there was a common intention that the claimant shall have an interest in the house any act done by her relating to the joint lives of the parties in my judgment is sufficient detrimental reliance”.

- [44] In the Privy Council decision in **Abbott v Abbott**¹⁸, the Board favoured the reasoning of the trial judge Mitchell J., who relied on the fact of the parties' joint and several liability to repay the mortgage supported by their life insurance policies being evidence of detrimental alteration.

- [45] The detrimental reliance in this instance therefore can only be the parties' joint and several liability to repay the mortgage at the time the said mortgage subsisted in their joint and several names, as well as the claimant's payments for the expenses admitted to, relative to the property.

Proportion

- [46] The final consideration for the court is what proportion was intended that the parties share the beneficial interest.

- [47] The principle emanating from **Oxley v Hiscock**¹⁹ is that in determining what share each party is entitled to, the court must consider the whole course of dealing between the parties in relation to the property and determine what is fair.

- [48] Financial contribution is only one of the relevant factors. The court must also have regard to the arrangements made to meet outgoings such as mortgage contributions, taxes and utilities, repairs, insurance and housekeeping.

¹⁷ [1990] 1 All ER 111

¹⁸ [2008] 1 FLR 1451

¹⁹ [2004] EWCA 546

- [49] The defendant argues that the claimant's interest should be constrained to 7.5% of the value of the disputed property as at 11th April 2021, which was prior to repair and renovation works solely undertaken by the defendant in November 2021.
- [50] The court agrees that the value of the property should be as of 2021, prior to the renovation works undertaken by the defendant. The claimant asks that his proportion be set at fifty (50%). Respectfully, the outgoings proven by the claimant to be spent on the property were payments of water bills, telephone bills and part internet bills with sole responsibility of the mortgage payment and repairs loans remaining with the defendant even after the breakdown of the relationship in excess of a decade.
- [51] The court is also in agreement with the defendant that the interest of the claimant, though manifest, does not equate to a fifty (50) percent share entitlement. The court notes the breakdown of the relationship between 2009/201 however the claimant remained in possession but did not provide any evidence of contributions made towards the mortgage payments during that period. The claimant in his witness statement mentions unpaid taxes in the sum of \$43,179.00 from 2009 to 2021 during the period of the breakdown but did not provide any evidence of efforts made to pay those outstanding taxes.
- [52] The court takes into consideration that although the claimant remained in occupation after the breakdown of the relationship, he did not make any significant contribution to the mortgage or the maintenance of the property.
- [53] The court accepts the parties by their conduct and their whole course of dealings prior to the breakdown of their relationship had a common intention that the claimant would have had a beneficial interest in the property. However, the defendant's entitlement is significantly more than that of the claimant and accordingly the court finds that the beneficial interest in the property is Twenty percent (20%) to the claimant and Eighty percent (80%) to the defendant.

[54] The court also accepts that the parties jointly invested in the construction of the apartments for rental purposes. It is the evidence that the defendant is solely responsible for collection of the rent. The defendant shall accordingly give an account of the rental income to the claimant.

Order

[55] It is therefore ordered and declared as follows:

- (1) The claimant, **Paul Christopher**, and the defendant. **Judlyn Smith**,
are joint beneficial owners of property situate at Bailles Bacolet, St. David in shares of Twenty (20%) for the claimant and Eighty (80%) for the defendant, respectively.
- (2) A valuation of the property situate at Bailles Bacolet shall be conducted by a jointly agreed and paid valuator to determine the value of the claimant's 20% share interest as at the year 2021.
- (3) The defendant shall provide the claimant with an account of the rental income received from the apartments and shall pay his 20% share entitlement, if any, in the rental income collected, less \$5,000.00;
- (4) Both parties having had some level of success and shall accordingly bear their own costs.

Agnes Actie
High Court Judge

By the Court

Registrar