THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV 2019/0715

BETWEEN:

HEATHER WARNER nee HUGHES

Claimant

-AND-

FEESTON NANTON

Defendant

Appearances:

Joanne Massiah for the Claimant

Wattisa Rose for the Defendant

2023: July 18th

2024: February 22nd

DECISION

[1] **DRYSDALE, J.**: This matter for consideration is a claim for trespass in which the claimant seeks an order for possession of the property and damages.

THE PLEADINGS

THE CLAIM

[2] The Claimant initiated these proceedings on 31st December 2019 seeking the following reliefs:

‘1. Immediate possession of land situate at Cassada Gardens and registered and recorded in the Land Registry as Registration Section: Cassada Gardens & New Winthorpes: Block: 42-1894A; Parcel: 432.

2. An Order that the Defendant is a trespasser on the Claimant’s land

3. Damages for trespass against the Defendant

4. Interest pursuant to the Eastern Caribbean Supreme Court Act, Cap: 143:

5. Such other relief as the Court deems just; and

6. Costs.’

[3] In support of the claim the claimant contends that she grew up at the property and routinely assisted her mother with the payment of property taxes, insurance, and house maintenance. That although she migrated to the United States upon her return, she would reside at the property which at the time was also occupied by her son and his family.

[4] She further contends that consequent upon the death of her mother, Naomi Nanton formerly Ephraim (hereinafter referred to as “the deceased”) on 22nd May 2022 and by virtue of her Last Will and Testament, (hereinafter “the Will”) that she became the owner with absolute title of the property. The claimant further contends that the Will was read by counsel in the presence of the defendant, another family member and herself and thus the defendant was fully apprised of his lack of ownership in the property. Since that time the defendant never challenged the Will and or the vesting of the property in her.

[5] The claimant states that following the reading of the Will, she informed the defendant that she would be conducting property repairs and requested payment of rental and utilities from him and her son who were both in occupation of the property. Despite her instructions, the defendant refused to pay rent, leading her to instruct her attorney to demand his eviction by 30th October 2018.

[6] However, the defendant in an attempt to prolong his stay on the property, obtained a restraining order under the Domestic Violence and Protection Act on 4th September 2018, excluding her son, his partner and their children from the property.

[7] The defendant has refused to vacate the property and continues to remain in unlawful possession thereof.

THE DEFENCE AND COUNTERCLAIM

The Defence

[8] The defendant acknowledges the claimant's ownership of the property through inheritance but denies being a trespasser in unlawful occupation of the premises. The defendant also argues that despite the deceased acquiring the land prior to her death, they jointly constructed the house, and it was their agreement to treat the property as their matrimonial home which agreement persisted after the dissolution of the marriage in 2015.

[9] He claims that he continued residing on the property at the deceased's request, even after sustaining significant injuries from an acid attack by the deceased, which led to his current disability.

[10] The defendant acknowledges not contesting the grant of Probate but insists that his failure to contest it does not negate his rights in the property. He admits to not vacating the property, citing his beneficial interest, and asserts his entitlement to occupy the premises and be compensated 50% of his interest in the property.

[11] The defendant denies using the protection order as a ruse to continue his unlawful occupation and claims that it was obtained due to alleged abusive behaviour of the claimant's son.

[12] The defendant also denied the claimant's contention that she assisted the deceased with the payment of property taxes, insurance and maintenance contending that the claimant suffered from a debilitating disease and did not work whilst resident in Antigua.

The Counterclaim

[13] The defendant states that he and the deceased were married on 27th October 1990. Some five years later in March 1995, they took out a mortgage loan of the sum of $105,000 for the construction of the matrimonial property. It was agreed that although the land was in the name of the deceased, that they would obtain a shared interest in the property.

[14] The defendant asserts that he equally contributed to the mortgage payments which was $900.00 per month. He provided his employment details stating that at the time he worked at Mill Reef earning the sum of $800.00 per week. Further he also earned additional income from vehicle hiring for 6 months during the year. The defendant states that the deceased was a cook at Mill Reef earning the sum of $500.00 per week.

[15] The defendant claims to have been in occupation of the property for the past 25 years and cites his injuries caused by the deceased which has rendered him disabled and states that he is unable to vacate the premises without his interest being realised.

The Reply

Reply to Defence

[16] The claimant strongly denies suffering from a deliberating disease, which prevented her from working. The claimant provided her employment history from 1986 to 2003 after which point, she

migrated to the Unites States of America. She also asserted that she made statutory contributions during that period and that the defendant was fully aware of her employment history when she lived in Antigua.

[17] The claimant asserts that both she and the deceased initially sought the loan, but due to her job loss, she could not serve as a guarantor. As a result, the defendant stepped in and signed as guarantor under these challenging circumstances.

[18] The claimant disputes the defendant's assertion of equal payments and instead stated that the deceased solely covered the mortgage from her wages. Further that the property was insured in the sole name of the deceased and the payment for the property, insurance and taxes were paid by her with financial contribution from the claimant. The claimant stated that the deceased was a fiercely independent and proactive woman who either on her own or jointly with her took care of her own affairs. The claimant disputes the defendant's claim of a $900.00 mortgage payment, stating that it was actually $1200.00.

[19] The claimant refutes any beneficial interest of the defendant in the property, citing his lack of financial contributions and asserting that he was unwilling to contribute towards the household expenses or property related costs. The claimant also contends that she witnessed several arguments between the defendant and the deceased and that there was a strained financial and personal dynamic between them whereby the defendant was resolved not to contribute money to the property and that he was determined to live in the property free from any responsibilities.

[20] The claimant rejects any assertion that the property was held on trust for the defendant and reiterated that the deceased purchased the land five years prior to her marriage to the defendant from her own finances.

[21] The claimant denied that her son was abusive towards the defendant and further stated that the initial action, brought by the defendant pursuant to the Domestic Violence Summary Proceedings Act, was dismissed on September 1st, 2020 and the Interim Protection Order was discharged after the full facts of the case was heard and ventilated before the magistrate.

[22] The claimant states that she has continued to pay the insurance for her property and has been unable to access her property and has included significant expenses to defend this claim.

Defence to Counterclaim

[23] The claimant rejects the assertion of joint and several liability for the mortgage, denying the intention for the defendant to acquire an equal share in the property. She also disputes the assertion of equal financial contribution towards the loan and averred that the entire mortgage payment was deducted from the deceased wages.

[24] The claimant also disputes the defendant's assertion about his weekly wages and contended that the defendant was employed as an assistant mechanic, earning a wage of $409.48.

[25] Finally, the claimant acknowledges the divorce of the defendant and the deceased in 2015 and reveals that before their divorce in 2001, the deceased obtained an interim protection order against the defendant under Domestic Violence Summary Proceedings Act, issued on 22nd January 2002.

The Evidence

[26] Three witnesses were presented for trial. For the claimant, a witness statement was filed by her son Colin Constant and herself while the defendant submitted a witness statement on his behalf. For the purpose of brevity only pertinent information not covered in pleadings will be highlighted.

The Claimant

[27] The claimant acknowledges the intimate relationship between the deceased and the defendant before marriage, revealing that the defendant had lived with them whilst she was a teenager. Despite this, the claimant stressed that she and the deceased maintained a close relationship which resulted in the deceased discussing with her the desire to build a home.

[28] The claimant stressed that the deceased acquired the land solely from her salary and had expressed pride in this accomplishment. The land was acquired 5 years prior to the deceased and defendant's marriage and was registered exclusively in the name of the deceased. The claimant contends that after she had graduated from school, she and the deceased had discussed the desire to build a home. The claimant emphasizes that the defendant consistently expressed his disinterest in building a home with the deceased, reiterating this stance during multiple discussions initiated by the deceased.

[29] The claimant states that she and the deceased, approached the Royal Bank of Canada to explore mortgage requirements. Although the deceased was deemed qualified, due to the deceased's age approximately 51 years old at the time, the bank required the claimant to apply as a co-applicant or guarantor. The claimant reveals that she subsequently lost her job and could not provide a current job letter when the loan was approved. The claimant states that due to this development and the disbursement of the mortgage being contingent upon there being a guarantor that the deceased approached the defendant to act in this capacity however the defendant repeatedly refused. Subsequently after she obtained another job, she was able to convince the defendant to act as guarantor assuring him that he would not be liable for any financial obligations as if the deceased required any assistance, she would undertake to assist her as she was gainfully employed once again.

[30] The claimant asserts that upon completion of the house, the deceased, the defendant, her son and herself all moved into the property. Following this, the deceased obtained a loan for a vehicle, and payments for both the car note and the mortgage in the sum of $200.00 and $300.00 respectively per week were deducted from the deceased's salary.

[31] The claimant states that the relationship between the defendant and the deceased became tumultuous, leading to an irretrievable breakdown around the year 2000. At that time, the deceased obtained a protection order against the defendant.

[32] The claimant refutes any beneficial interest for the defendant in the property. She emphasizes that it was acquired five years before the deceased married him. She asserts that it was always the deceased's dream to own a parcel of land to construct a home herself, the deceased's grandson and the claimant.

[33] During cross examination, the witness acknowledged living with the defendant and the deceased as a family, and that the defendant had accepted her as his daughter but asserts that she does not consider the defendant a fatherly figure and in fact does not see him as family.

[34] The claimant further acknowledged that from the deceased weekly earnings of $610.00 the sum of $300.00 was being applied to the mortgage and another sum of $200.00 was applied to the vehicle loan leaving the sum of $110 per week for expenses. She asserts that the deceased solely covered all expenses as the defendant did not contribute financially to the household. However, she later admitted that the defendant sometimes bought groceries for the household.

[35] The claimant asserts that she knew every detail of her mother's personal life even after she had migrated and confidently states that the defendant never provided any monetary contribution towards the mortgage.

[36] The claimant acknowledges asking both her son and the defendant to pay rent but admits that her son never paid her rent and did not contribute to the utilities whilst on the premises.

[37] The claimant admits that the defendant became disabled in 2002 due to an injury caused by the deceased. She also acknowledges that the deceased had been living on the property for the past 25 years.

Colin Constant

[38] The witness is the grandchild of the deceased and the son of the claimant. He deposed that he was initially raised by the claimant and the deceased, and that the defendant played a role in his upbringing during his minority. Following his mother's migration to the United Sattes he remained in the care and custody of the deceased and the defendant for several years before eventually migrating to the United States to attend high school.

[39] He deposed that he had a close relationship with the deceased and attribute this being due to him being the first grandchild and living together. He highlights the deceased's industrious and fiercely independent nature, who found enjoyment in providing for her family.

[40] The witness noted frequent arguments between the deceased and the defendant during their marriage and shared residence, leading to the defendant moving out periodically for several months. The witness noted however that the defendant would always return after several months. The witness stated that during one of these disagreements that there was an incident where the defendant was injured. Both the deceased and he cared for the defendant during this period of hospitalisation.

[41] The witness stated that he returned to Antigua in 2015 and resumed living with the deceased. At that time, he observed that the house dynamics had changed wherein the defendant was no longer living inside the house. That the defendant resided in the outside laundry room and that the washing machine had been moved to the inside of the house. Additionally, that the defendant was not allowed to enter the house leading him to perform daily tasks like cooking bathing and washing utensils outside.

[42] The witness explained that he had inquired of the defendant the reason for him living outside and learned from him that he had in 2013 fallen on hard times and had requested permission to live on the property. The deceased granted him permission, allowing him to occupy the laundry room.

[43] The witness expressed sympathy for the defendant and asked the deceased to allow him to sleep in the unoccupied room. The deceased agreed but imposed restrictions, barring the defendant from using the bathroom, laundry of kitchen facilities.

[44] The witness stated that during his time in Antigua until the deceased death, he regularly assisted her by driving her to the bank every Monday and handling errands. He used cash provided by her to pay utility bills, and insurance premiums. He stated that he never observed any contributions from the defendant to the household expenses or property related matters when he lived with the deceased.

[45] The witness details that after the deceased death and the return of the claimant to New York, living conditions with the defendant, himself, his partner and children became increasingly toxic, leading to police involvement multiple times. He accuses the defendant of frequently using offensive language and attempting to trigger physical altercations. Subsequently he received a temporary protection order, requiring him to leave the property and attend court two weeks later.

[46] Eventually that protection order was discharged 2 years later upon a full trial of these allegations.

[47] The witness argues that the defendant has alternative accommodation, citing extended family and adult children who can provide support. Further that despite the defendant's disability, the defendant remains active working part-time as a mechanic both from the property and travelling to customer's homes. Additionally, the defendant receives government assistance for utilities, a monthly food voucher and a pension from social security.

[48] The witness strongly objects to the claimant being denied access to property bequeathed to her and owned solely by the deceased. He argues against the defendant profiting from the property, emphasizing that the defendant made no contributions to its acquisition, mortgage, insurance, maintenance, or taxes.

[49] During cross examination, the witness acknowledged being a child when the property was constructed and that he could not provide information on any agreements between the defendant and the deceased regarding the property. He also confirmed his inability to speak to any contributions made by the defendant towards acquiring or constructing the property.

[50] The witness concedes that from 2006 to 2015, he would not have been aware of the defendant's presence on the property. He stated, however, that during his residency on the property, frequent arguments occurred between the deceased and the defendant regarding utility payments. He asserted that the defendant never utilized his utility vouchers to contribute to those payments.

[51] He admitted that despite the claimant's request for him to pay rent for using the premises, he never actually paid any rent.

[52] Finally, the witness concluded by stating that the deceased had informed him about the contents of the Will, and what was disclosed aligns with the information she had shared with him.

The Defendant

[53] The Defendant deposed that he is 64 years of age. He stated that he met the deceased at their mutual place of employment where she worked as a housekeeper/cook earning $600.00 per week and he as an assistant mechanic earning $800.00 per week. Additionally, during the peak of the tourist season he also engaged in the vehicle hiring which at its best earned as high as $8000.00 per month.

[54] They cohabitated together prior to their marriage in 1990. That although the deceased acquired the land on which the house sits prior to their marriage he had given the deceased monies for the purchase of the property. Notwithstanding the land being registered in the sole name of the deceased they had agreed to jointly construct their matrimonial home on the property and that it was agreed that each party would acquire an equal interest in the property.

[55] Five years after the acquisition of the land they hired a contractor to construct the house and to that end obtained a loan for which he was co-borrower from the Royal Bank of Canada in the sum of $105,000.00. The defendant acknowledged that his salary was not directly linked to the loan but that he and the deceased had an agreement wherein he would provide her with cash roughly $400.00 -$500.00 per month to service part of the loan which amounted to about $900.00 per month. He asserts further that beyond the shared responsibility for the monthly loan repayment, that he also contributed to the maintenance of the matrimonial home and also covered part of the family's weekly living expenses.

[56] The defendant referenced an incident with the deceased, where acid was poured over him, causing severe burns to 50% of his body and blindness in his right eye. He spent around three months in Holberton Hospital recovering from the injuries. Due to the resulting disabilities, he had to cease working and is currently reliant on disability benefits.

[57] The defendant deposed that after the traumatic incident, the deceased hired legal representation for herself. The legal matter was not pursued further as he chose to drop all charges against the deceased. He opted not to have her face imprisonment, considering their family and property. In return for withdrawing the charges, the deceased committed to caring for him due to the damage she inflicted upon him. This agreement endured beyond the breakdown of their marriage, leading him to remain on the premises.

[58] The defendant deposes that despite his inability to work consistently due to the injury that he occasionally took on odd jobs, utilizing his skills to generate additional income since disability benefits were insufficient. Even in his disabled status, while living with the deceased, he made contributions to the home by leveraging utility and food voucher subsidies from PDV, Caribe Antigua, and Barbuda.

[59] The claimant acknowledged that the claimant's son with his partner and children eventually moved in or about 2014. They all continued to reside there after the death of the deceased until proceedings pursuant to the Domestic Violence Act was instituted against the claimant's son.

[60] The defendant was told by the claimant, after the deceased death, that not only had the deceased divorced him, but also had put everything in her name. The statement confused him as he believed that the property was jointly owned by him and the deceased. After being informed about this version of events, he received a letter to liquidate outstanding rent arrears and vacate the property. He refused, citing his substantial contribution to the matrimonial home. The defendant denies being a trespasser and emphasizes that this has been his residence for the past 25 years and that he's made significant contributions to the maintenance and upkeep of the property.

[61] On cross examination, the defendant was challenged regarding his claim of earning $800.00 dollars a week and denied the suggestion that he made $409.48 plus benefits per week. The

defendant reiterated that, aside from his income as an assistant mechanic, he also earned money through the self-hire of a vehicle, particularly during the high tourist season.

[62] The defendant refuted the claim that he lived in an outside laundry room upon his return to the property. He stated that the laundry room was attached to the house and clarified that in any case, he never resided in a detached room separate from the main house.

[63] The defendant acknowledges an age difference of approximately 14 years between him and the deceased. He also acknowledged that when they met, she was in the process of paying for the land at CHAPA and was accustomed to taking care of her family.

[64] The defendant acknowledged signing the loan as guarantor and confirmed that the loan payments were being serviced through salary reduction from the deceased.

[65] When questioned about his ability to maintain the home given his disability the defendant argued he had the means to support and pay the mortgage. He pointed to receiving a monthly disability benefit of $1,400.00 as a source of income. He denied doing odd jobs and receiving income from that stating he was entirely able to survive on his disability benefit.

[66] The defendant asserted paying the insurance for the house but admitted having no proof. He mentioned giving money to the deceased for insurance payments. The defendant denied the idea that the claimant had ever paid for insurance, insisting that the claimant, being unemployed, could not afford it.

[67] The defendant insisted that he has an interest in the property and that he assumed that upon the death of the deceased that he had in fact owned the property. He stated that he was not aware that the deceased died with a Will and that he was surprised to learn that the property had been bequeathed to the claimant.

ISSUES

[68] Having considered the pleadings, the evidence, and submissions the issues extrapolated for consideration are as follows:

i. Whether the defendant has any beneficial interest in the property?
ii. Whether the defendant is a trespasser?
iii. Whether the claimant is entitled to damages?

ANALYSIS AND THE LAW

Whether the Defendant has a beneficial interest in the property

[69] The Claimant is the exclusive registered owner of the property, having inherited it through the Last Will and Testament of the deceased. Generally, legal ownership implies associated beneficial interest. While ownership may be subject to certain overriding or beneficial interests, the assumption is that beneficial interest aligns with legal ownership. Therefore property solely registered in an individual's name establishes a case of sole beneficial interest unless proven otherwise.

[70] Beneficial interests are not registered, and challenging the presumption requires the defendant to prove a disparity between the beneficial interest and legal ownership. Baroness Hale of Richmond in the case of **Stack v Dowden[1]** at paragraph 57 aptly enunciates the position as follows:

> '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.'

[71] Therefore, the burden to establish a beneficial interest rest on the defendant who has made this assertion. A beneficial interest can arise through express declaration of interest or by way of trust. In the absence of documentation expressing such intention the case hinges on whether the circumstances give rise to a trust. In the case of **Gissing v Gissing[2]** the concept of beneficial interest in property created by the conduct of the parties was addressed. The court acknowledged that beneficial interests could be established through conduct, even where a formal agreement or express declaration was lacking. The key factors considered included the parties' shared intentions and the actions they took that played a role in the acquisition or enhancement of the property. Lord Diplock espoused this position as follows:

> 'A resulting, implied or constructive trust—and it is unnecessary for present purposes to distinguish between these three classes of trust— is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land…

[1] [2007] 2All E R 292
[2] [1970] 2 All ER 780 at 790

…As in so many branches of English law in which legal rights and obligations depend upon the intentions of the parties to a transaction, the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party. On the other hand, he is not bound by any inference which the other party draws as to his intention unless that inference is one which can reasonably be drawn from his words or conduct. It is in this sense that in the branch of English law relating to constructive, implied or resulting trusts effect is given to the inferences as to the intentions of parties to a transaction which a reasonable man would draw from their words or conduct and not to any subjective intention or absence of intention which was not made manifest at the time of the transaction itself. It is for the court to determine what those inferences are.

In drawing such an inference, what spouses said and did which led up to the acquisition of a matrimonial home and what they said and did while the acquisition was being carried through is on a different footing from what they said and did after the acquisition was completed. Unless it is alleged that there was some subsequent fresh agreement, acted upon by the parties, to vary the original beneficial interests created when the matrimonial home was acquired, what they said and did after the acquisition was completed is relevant if it is explicable only upon the basis of their having manifested to one another at the time of the acquisition some particular common intention as to how the beneficial interests should be held. But it would in my view be unreasonably legalistic to treat the relevant transaction involved in the acquisition of a matrimonial home as restricted to the actual conveyance of the fee simple into the name of one or other spouse. Their common intention is more likely to have been concerned with the economic realities of the transaction than with the unfamiliar technicalities of the English law of legal and equitable interests in land. The economic reality which lies behind the conveyance of the fee simple to a purchaser in return for a purchase price the greater part of which is advanced to the purchaser upon a mortgage repayable by installments over a number of years, is that the new freeholder is purchasing the matrimonial home upon credit and that the purchase price is represented by the installments by which the mortgage is repaid in addition to the initial payment in cash. The conduct of the spouses in relation to the payment of the mortgage installments may be no less relevant to their common intention as to the beneficial interests in a matrimonial home acquired in this way than their conduct in relation to the payment of the cash deposit.'

[72] More recently Lord Bridge of Harwich in the case of in **Lloyd's Bank PLC v. Rossett**[3] endorsed this view and said the following in this regard:

[3] [1991] 1 AC 107

> 'The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as theirs and managing their joint affairs, there has at any time prior to this acquisition or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of to share in this sense can only, I think be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to the beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppels

[73] Extrapolated from the above is that to create a trust there must be a common intention that the property should be vested not only in the name of the person claiming a beneficial interest, but that the non-owner must have acted to his detriment.

[74] In light of the above it is patent that the conduct of the parties is pivotal to determining the issue of common intention. The Court must therefore carefully examine all the circumstances to see if the conduct gives rise to such. Having set out the legal principles which should guide any determination of this issue, I will now assess the relevant factors pertinent to this case.

[75] The deceased and the defendant cohabitated for several years prior to being married. Prior to them entering a relationship the deceased had started payment on a parcel of land from CHAPA. The defendant was aware of this, but it does not seem that he made any contribution to the acquisition of the land.

[76] The deceased and defendant were married and several years later a decision was made to build a home on the property. Although the claimant suggests that the defendant signed as guarantor the charge documents clearly reveal that the defendant was a co-borrower. A co-borrower and guarantor have different roles and functions in the lending process. A co-borrower is a person who along with the primary borrower applies for a loan. Both borrowers share the responsibility of repaying the loan and their combined financial income is considered during the application process. Each co-borrower is equally responsible for the debt as clearly evidenced by the terms of the agreement which referred to the defendant as 'jointly and severally liable for the repayment of the principle and interest hereby secured.' In contrast a guarantor is a secondary party whose responsibility for the repayment of the loan only arises where the borrower has defaulted.

[77] The fact that the defendant signed as co-borrower undermines the claimant's assertion that the deceased qualified for the loan in her own right. Although the claimant suggested the bank required an additional layer of protection due to the deceased age, the deceased at the material time being 51 years old, it is more likely that the debt service ratio of the deceased was too high

to enable her to qualify for the loan independently. The deceased debt service ratio with the inclusion of the both the mortgage and vehicle loan amounted to 82% of her weekly salary and nearly 50% of her salary without the inclusion of the vehicle loan. This represents a significant portion of the deceased salary dedicated to debt repayment. In fact, the claimant admitted that the deceased only had $110.00 per week after the deduction of the loans to meet all her living expenses. This raises concern about the financial strain the deceased faced and her ability to independently and comfortably manage her expenses without assistance.

[78] Albeit that the deceased's salary paid for the mortgage this to my mind is more of an administrative decision by the bank for efficiency to obtain payment from one salary where that salary is sufficient to facilitate one lump sum payment per month. The need to draw down on a second salary would only arise where the funds received from that first salary are insufficient. The exclusive payment of the mortgage from the deceased salary does not automatically imply that the defendant had no interest in the property. Given the financial strain that the deceased would have faced, notwithstanding her independent nature it is more likely that she would have received assistance from her husband to meet the normal living expenses. I am strengthened in my belief taking in account the evidence of the claimant which asserts only period annual support in the form of insurance payments. Given the absence of regular financial contributions from the claimant combined with the financial strain the deceased faced strengthens the probability that the deceased received financial assistance from the defendant to navigate her challenging financial circumstances.

[79] Although the defendant was challenged on his assertion that he provided the deceased with the sum of $400.00 to $500.00 per month, this challenge was primarily based on a letter of employment of some vintage from 1994. A letter from July 1994 would not accurately reflect the defendant's salary in 2002 or even in March 1995 when the charge documents were executed by the deceased and the defendant thereby making it unreliable to establish his financial situation at the time. Further, the evidence is such that the defendant engaged in alternative employment during the peak tourist season and generated significant sums thereby supporting the reasonable conclusion that he had additional income source to supplement his lifestyle and therefore could easily make the contribution of $400.00 as alleged. Having considered all the evidence I accept that the defendant's evidence that he made those payments which were used for the living expenses considering that the mortgage payments were automatically deducted from the deceased salary. This payment is significant as it played a critical role in allowing the deceased to obtain and service the mortgage, to cover living expenses and to maintain a satisfactory lifestyle. I also accept that the defendant also utilised a stipend he obtained for the payment of utilities for the household. Whilst this stipend was first received in the year 2010 it still represented a contribution to the household/living expenses. The defendant and deceased were married at the time, and I accept that it was represented that albeit his name was not on the land that he would have obtained a vested interest in the property, thereby leading him to make contributions thereto. The establishment that the defendant contributed to the mortgage/living expenses to his detriment with his reasonable expectation of being beneficially entitled is deemed sufficient to justify a beneficial interest in the property.

[80] As it has been established that the defendant acted to his detriment and financially contributed to the living expenses of the property with the understanding that he would gain an interest I acknowledge that it may not be necessary to delve further into the analysis. However, the issue of the injuries of the defendant at the hands of the deceased could provide additional context regarding a potential basis for a beneficial interest.

[81] The defendant detailed the violent acid attack by the deceased resulting in significant injuries along with her agreement for her to take care of him in exchange for avoiding criminal charges. This evidence though uncontested by itself is insufficient to establish a beneficial interest as typically such interest requires a financial contribution. However given that the injury inhibited the defendant from working and it was agreed that in compensation for this the deceased would continue to take care of him, that the defendant had no other residence and continued with the concurrence of the deceased to reside in the property well after their divorce, and the fact that the defendant has resided on the property for a period exceeding 20 years is also suggestive of a common intention that that defendant was to be vested with an interest in the property despite the lack of a traditional financial contribution.

[82] In light of the above, although the Will of the deceased may have granted legal ownership to the claimant, the beneficial interest of the defendant had crystalised prior to its execution.

[83] Considering the above, it is reasonable to conclude that the defendant made some contribution to the property. The next step is to determine the specific extent of the defendant's beneficial interest in the property. The conduct of the parties remains pivotal in determining the extent of the defendant's interest. In **Oxley v Hissock**[4] the court pronounced that:

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

[4] [2004] EWCA 546

[84] I am guided by the above judicial authority which provides that a broad-based approach should be adopted. In that vein the court takes notice of not simply the financial payment and or expenses but also the course of dealing between the parties. I will also adopt the ratio and guidance of Ellis J in the case of **Greene v Greene**[5] wherein she stated:

> 'The evidence which underpins the whole course of dealing has been said to include any advice or discussions at the time of transfer which cast light on the parties intentions; the purpose for which the property was acquired; the nature of the relationship between the parties; the personalities of the parties; how they arranged their finances; how they discharged outgoings on the property and their other household expenses and whether they had children for whom they both had responsibility for providing a home.
>
> This Court is therefore satisfied that the proportion of the Parties' proprietary interest cannot be fixed solely by reference to the percentage of their direct and indirect contributions thus making all other conduct irrelevant.'

[85] Given the habitation and subsequent marriage, it is reasonable to infer that the decision to build the house was with the intention of it becoming the matrimonial home of the deceased and defendant, where the witnesses agree that they all lived as a family. The evidence also suggests that, despite a tumultuous relationship, the deceased repeatedly allowed the defendant back into the household, indicating a perceived shared interest in the property as their matrimonial home.

[86] Furthermore, it seems that there was a division of financial responsibilities between the deceased and the defendant with each handling specific bills and expenses, the deceased with the assistance at time from the claimant for the property taxes and insurance and the defendant for the utilities and other living as far as the sum contributed could do so. Having regard to the conduct of the parties and the whole course of dealing I ascribe the beneficial interest of the defendant to be 25%.

[87] It is noted that there has been no valuation of the property as of the date of trial. Considering, the defendant's age, being 64 years old, his disability and his limited financial resource, and the high cost of living in Antigua particularly as it relates to housing which the court takes judicial notice of it seems prudent that a more equitable division would be achieved by calculating the defendant's stake in the property as a life interest in the property, thereby allowing the defendant to live out the remainder of his life on the property, with the reversion being vested in the claimant upon the defendant's death.

[5] [2020] ECSCJ 134

ORDER

[88] It is hereby ordered that:

i. The defendant is entitled a life enjoyment in the property.

ii. The claimant is entitled to possession of the property upon the death of the defendant in accordance with paragraph 1 of this order.

ii. The parties shall each bear their own costs.

Jan Drysdale

High Court Judge

By The Court

Registrar