

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. ANUHCV2021/0395

BETWEEN:

DWIGHT DOUGLAS

Claimant

and

ANTONELLA GOMES

Defendant

Appearances:

Ms. Sherrie-Ann Bradshaw, Counsel for the Claimant

Mr. Lawrence Daniels, Counsel for the Defendant

2023: October 26th
2024: January 23rd

DECISION

- [1] **Byers, J.:** This matter arose from a disagreement between two individuals, who when the relationship was good and viable made certain agreements with each other. What was the extent of those agreements is now for the determination of this Court.
- [2] The proceeding was initiated by the claimant, who on 21st October, 2021 filed a Claim Form and a Statement of Claim wherein he sought the following reliefs:
- 1) A declaration that the house owned by the defendant located in Lightfoot West in the Parish of Saint John's Antigua and Barbuda situated on land located in Lightfoot West more particularly described at the Land Registry as Registration Section: Central; Block: 14 – 2090B; Parcel 171; is owned by the claimant and the defendant as follows: 40% to the claimant and 60% to the defendant, alternatively in such shares as the Court shall determine;
 - 2) Further or alternatively, an inquiry as to the beneficial interest in the house;
 - 3) An order that the claimant has the first option of purchase to pay the defendant her interest in the disputed home on the said land, and for the defendant to deliver vacant possession of the said house;
 - 4) That all necessary directions be given;

- 5) Interest pursuant to the Eastern Caribbean Supreme Court Act, Cap.143;
- 6) Such further or other reliefs this Honorable Court deems just; and
- 7) Costs.

[3] In response, the defendant filed a Defence and a Counterclaim on 3rd November, 2021 disputing the claimant's interest in her home and seeking declarative relief that the defendant is entitled to a 30% interest in the land situated in Lightfoot West; and for the defendant to pay the claimant his 70% share in the parcel of land described above, interest and costs.

Background

[4] The claimant is the owner of parcel 171 located in Lightfoot West St. Johns Antigua and Barbuda hereinafter "the Property". The defendant is the owner of the home situated on the property, hereinafter "the disputed home".

[5] The claimant and the defendant shared an intimate relationship that commenced, as this court understands it, in or about 2012. Prior to their relationship, in the year 2000, the defendant constructed a chattel house that consisted of two (2) bedrooms, a kitchen, a bathroom, and a dining room. At this time, the chattel house was located on land situated in Parham Village, Antigua. In 2014, based on an understanding between the Parties, the claimant gave the defendant permission to relocate her chattel house on the property at Lightfoot West.

[6] Thereafter, the chattel house was expanded by adding an extension to the bedroom, conducting repair works on the existing bathroom, building a new bedroom, a kitchen, and laundry room out of concrete blocks, tiling the same, and furnishing the kitchen completely along with the living room. Consequently, the house has become a permanent fixture on the property.

[7] There has now been a breakdown in the relationship between the parties. The claimant now contends that he is entitled to an interest in the home owing to his contribution to the expansion work conducted on the conversion of the chattel house into a permanent fixture. The claimant states that there existed a common intention between the Parties that in him contributing to the house's expansion he would be entitled to a share in the home and that if the relationship was to breakdown that he would be at liberty to pay the defendant for her interest in the said disputed home.

[8] The defendant disputes this position and asserts that the expansion work was solely done at her expense, though the claimant did assist in helping with the construction work around the home, his role was minimal at best and there had not been a common intention between the parties that the claimant will be entitled to an interest in the disputed home.

- [9] Further, the defendant argues that she had an agreement with the claimant to purchase his land in Lightfoot for the sum of \$80,000.00. Based on his assurance, she acted to her detriment by relocating her chattel house from Parham to Lightfoot and expended money to create a permanent fixture on the property. Additionally, she had caused a fence to be erected and a paved walkway to be constructed from which she now claims a 30% entitlement in the property. It is against this background that the defendant counterclaimed for declaratory relief in the manner stated above.
- [10] The core issue of contention between the parties is that of ownership rights. The task of this court is to determine what those rights in fact may be in each party's property.
- [11] In cases where the relationship between cohabitating couples has irretrievably broken down, recollection of words may be imperfect or conflicting by the time a dispute has arisen between the parties. This case is not unique in that regard, and the issues to be distilled must be determined based on the court's findings of facts, as it is those facts that must assist the court in determining whether there was any agreement between the parties, and if there was any agreement, the extent of that agreement.
- [12] There were seven (7) witnesses in this matter. Of the witnesses in this case, five (5) witnesses appeared on behalf of the claimant, and two (2) witnesses appeared on behalf of the defendant. Mr. Douglas appeared for himself along with his brother. Mr. Orville Douglas (a nurse who does masonry work occasionally), Mr. Nixon DeSouza (electrician), Mr. Leroy Cabey (mason), and Jonathan Bristol (a police officer). Mr. David Pierre (a builder by profession) and Ms. Antonella Gomes herself appeared for the defendant.

The Evidence

The Claimant

- [13] The claimant gave evidence in support of his assertion of a finding for a common intention between the parties. He asserted that both parties cohabitated in the house from December 25, 2015. Further, it was his idea for the expansion of the small chattel house for a little more comfort, including the addition of a bedroom. The witness stated further that the defendant was not in support of a bedroom being added but agreed to the bathroom and kitchen being built with concrete. In light of the agreed position, both parties proceeded to build on the land.
- [14] Concerning the expansion of the house, the claimant stated that he worked alongside Mr. Pierre over the course of three and a half (3 ½) months, specifically on weekends to offset the cost of employing another person to assist in the expansion. He stated further that he assisted in the following manner, completed work in the kitchen save the

finishing component of the kitchen; the flooring of the cupboard in concrete, the plumbing; primed 98% of the house and the framing of the cupboards.

- [15] The claimant stated that in all the areas that are concrete walls, he was the one who purchased the steel used. He acquired two bundles of steel and used a truck from his workplace to transport it to the property. He also arranged for the transportation of the blocks purchased by the defendant and borrowed a forklift to take them off. The materials that were used to line the master bedroom were purchased by himself from Mr. Harris, and some were received from the National Office of Disaster Services "NODS". Further, the complete house was cleaned down by himself. The prime and brushes were purchased by him.
- [16] The witness stated that it was agreed that he would handle the expenses for the electrical work required to be done on the home. On this basis, he had engaged the services of the electrician Mr. DeSouza to install the electricity and rewiring to the newly expanded house. He alleged that he was able to assist Mr. DeSouza as he had some basic electrical knowledge. The claimant stated that all electrical supplies were purchased by him and Mr. DeSouza had completed 99% of the electrical work before the defendant brought Mr. Vanden Browne to complete the remaining electrical work without his knowledge. Mr. DeSouza never returned, however, he paid him in full in the sum of \$8,000.00.
- [17] Further to his evidence, the claimant stated that he has always lived in the home with the defendant. However, in December 2020, the door to which he had a key was changed, and he never received any keys thereafter for any locks on the doors at the home. He alleged that the defendant failed to or neglected to give him a key despite most of his furniture being at the home.
- [18] The claimant, therefore submitted that there was an inferred common intention that he should have a share in the house. As such, he asserted that he has a legal and/or beneficial interest in the house. Additionally, given the fact that he is, in fact, the legal owner of the land, he should be given the first option to purchase the house at its present value.
- [19] In cross-examination, the witness stated that he and the defendant agreed to fund the repairs and expansion of the house out of pocket. The claimant was however unable to identify for the court what the budget was for the expansion and he was unable to provide many details of the costs associated with the expansion work or the extent of the plans for the said expansion. Interestingly, the witness admitted that he was aware that the defendant had taken out a small loan from the Co-operative Credit Union to fund the expansion of the disputed home. He did state however that he had given the defendant \$1,000.00 monthly, \$500.00 of which he attributed to the repayment of the loan, however, he was unable to provide any documentary evidence of this payment having come from his salary, bank account, or any other financial source.

- [20] During cross-examination by the defendant's counsel, the claimant maintained his position in face of the assertion that he did not reside at the disputed home but at Camp Blizzard. Despite rigorous questioning, he adhered to his statement clarifying that he lived at Camp Blizzard between the years 2000 to 2014. However, in 2015 he started to cohabitate with the defendant in the disputed home from its relocation. Further, when the expansion of the home had begun, he was living in the house. However, when the expansion was completed in or around 2021, he admitted that he did not have any access to the house as the defendant had changed locks on certain doors that had been replaced, and he never received keys for the same.
- [21] Concerning the hiring of the contractor, the claimant insisted that both he and the defendant had engaged Mr. Pierre to conduct the expansion works on the home.
- [22] The claimant also gave evidence that despite having a full-time job with the Antigua and Barbuda Defence Force, he was able to work regularly with the contractor on the work of the home. Whilst it was agreed that Mr. Pierre's work spanned three and a half (3½) months, which included work being conducted both on weekdays and weekends, it was not disclosed how many times he would have in fact assisted Mr. Pierre given the nature of his job. It was also disclosed that Mr. Pierre had a worker who was not the claimant that assisted.
- [23] When asked who had purchased the cement, form ply, steel, galvanize, toilet, face basin, granite, or tiles for the home, the claimant stated it was the defendant who bore the cost for the majority of the materials and he had not made any direct contribution to the acquisition of those materials save two bundles of steel.
- [24] However, when this purchase of steel was tested on cross-examination, it was clear that the claimant's documentary evidence contradicted his contention in court as it was also clear that the steel had been purchased prior to the expansion work being undertaken. The claimant then purported to substantiate that initial contention by stating that some steel was in fact purchased to erect the fence which had started before the expansion of the home, and steel was bought for the expansion of the home before the work had commenced on the disputed home.
- [25] Additionally, when the claimant was vigorously cross-examined as to his involvement in the electrical work conducted by Mr. De Souza and the extent of the work completed by Mr. DeSouza, which was another fact he relied on to advance his case of the common intention, the claimant was unable to specify what electrical works were left outstanding and whether it was 99% completed. However, he did admit that the defendant did hire another electrician, a Mr. Brown who completed the outstanding electrical work though he was unaware of the extent of those works.

- [26] The claimant however throughout his evidence maintained that he did not tell the defendant that he would sell her his parcel of land. He in fact, apart from clear denials of such an agreement, contended that rather the nature of the discussion that was had with the defendant was that if the parties ever had a dispute, that the defendant would sell to the claimant her interest in the home, a position he maintained even in light of his admission that the disputed house had been initially solely acquired and owned by the defendant.

Orville Douglas

- [27] This witness was the claimant's brother and claimed that the claimant had hired him to assist in the casting of the floor for the concrete section of the house where he worked alongside Jonathan Bristol and the claimant for the sum of \$200.00. In cross-examination, the witness however stated that the casting he spoke of was on the pavement leading to the house and consisted of a day's work. He also purported to contend that the claimant at the time lived with the defendant and her son but did not provide any details that could substantiate this contention.

Mr. DeSouza

- [28] The witness admitted that he was a personal friend and colleague of the claimant and at one point was in fact the claimant's superior in the Defence Force.
- [29] The nub of his evidence was to lay the basis of the claimant's claim as to being the person responsible for contacting him and instructing him as to the extent of the electrical work to be completed at the defendant's home.
- [30] The defendant never disputed his involvement but it was clear that his work was not as comprehensive as suggested by the claimant by the fact that another electrician had to be hired subsequently to complete the work.

Leroy Cabey

- [31] This witness was solely to indicate that the claimant had contracted him to construct a concrete fence around the property sometime in 2017. It was again clear that this witness had provided work for the claimant but the quantification of that work was nebulous. He did admit that he had been assisted physically by the claimant and the claimant's brother in the construction of the said fence.

Jonathan Bristol

- [32] This witness was another friend and colleague of the claimant who gave evidence that he had provided one day's work on some unknown date at the property.

The Defendant

- [33] The defendant in her evidence stated that her chattel house was built in 2000 for the sum of \$175,000.00. At that time, the house had been situated at Parham Village on the property of her ex-partner. Subsequent to her having commenced a relationship with the claimant and having found herself in need of moving her house, she moved the same with the express permission of the claimant to Lightfoot West where she then undertook an expansion of the house. This undertaking was always at the instance of herself and there was never an agreement between herself and the claimant for him to invest any money or material in her house. In fact, the expansion of this house was always her expense, she having negotiated a loan facility from the Co-operative Credit Union to facilitate the same.
- [34] In relation to the building material for the expansion, the defendant stated that she solely purchased all blocks, cement, sand, and stone to do the house along with the galvanized, cedar ply rafters, pull-line, dressed, and rough wood. The cupboards were also redone.
- [35] The payment to the mason, carpenter, electrician, plumber, and all workmen was paid exclusively by the defendant. The defendant asserted that she also paid the electrician, Vaden Browne, to install and complete all electrical works. It is the defendant's evidence that the claimant at no time purchased any building materials that were used upon the house, except some substandard light switches which she did not utilize. The construction work was done only when she was home on weekends, and although the claimant was around he did work some weekends at the Defence Force.
- [36] The defendant vehemently denied that there was ever any intention, common or otherwise that the claimant would have any interest in her house.
- [37] In cross-examination, the witness denied receiving \$1,000.00 every month from the claimant. She asserted that rather he would inconsistently pay her the sum of \$350.00 from which she would provide him meals when he would visit the house. The defendant therefore denied that the Claimant assisted in the repayment of the loan to the credit union but rather that those payments were undertaken by way of direct salary deductions.
- [38] While the defendant admitted that she did not contribute financially to the construction of the walkway or the fence and that the claimant would assist the contractor when he was around on a weekend, the defendant remained unshakeable in her position that there was no agreement between herself and the claimant that he would acquire an interest in her house. She did admit that she had intended to have a family with the claimant and build on their relationship.

- [39] In that regard, the defendant admitted that one point the claimant had brought several items of furniture and home appliances to the house and had retained certain personal items as the house. However the defendant's position was that the majority of the personal items had already been returned to the claimant and that any appliances or items of furniture that were in the house were items she did not utilize. The defendant maintained that even with the claimant having had some items in the home, whether personal or otherwise did not support the contention that they lived together but rather that there was a relationship of a visiting nature which was now at an end.
- [40] The witness stated that having expanded her housed and expended monies to do so, she was therefore entitled to an interest in the land upon which the house rested having increased the value of the land. Further in her own right, the claimant submitted that she was entitled to an interest in the land itself, she having contributed some unquantified sums to the purchase of materials for the construction of the walkway, the fencing, and the driveway.
- [41] Thus in 2021, when it appears that the relationship had reached its end, the defendant presented the claimant for the first time a document setting out the terms of what she considered as the agreement to buy the claimant's property and it is that agreement that she contended that she was entitled to enforce in her favour.

Mr. David Pierre

- [42] This witness was the contractor for the defendant and also a cousin of the defendant. His evidence was clearly that he had only dealt with the defendant for the moving of her house and the later expansion of the house. He admitted that he had been assisted by the claimant periodically during the expansion of the project which he undertook mostly on weekends with some help from others who he said the claimant brought to the site. However, his dealings were always with the defendant.

The Claimant's Case

- [43] Counsel for the claimant submissions was quite brief. Counsel submitted that on the totality of the evidence led at trial, there is nothing to show or support the contention that the defendant has an interest in the claimant's land. However, on the other hand there was clear and cogent evidence that the parties had a common intention in relation to the renovation of the chattel house which sits on the parcel of land owned by the claimant. In the submissions of counsel, it was contended that if the court were to simply consider the language of **sections 23 and 28 of the Registered Land Act Cap. 374¹**, it was clear

¹ section 23 reads in part " ... the registration of any person as the proprietor with absolute title of a parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever...". Section 28 speaks to registered lands being subject to overriding interest unless expressly stated otherwise in the register which includes

that the structure now having been permanently affixed to the land would belong to the person in whose name the title reposes. In this case the claimant. However, counsel submitted that the claimant was not seeking to rely on the interpretation of the **Act** in this manner but rather on the interest that he had acquired due to his direct and indirect contributions towards renovation works and as such rightly claims to have an interest in the same.

- [44] In considering the claimant's claim, counsel submitted that the court is therefore entitled to take guidance from the cases of Pettitt v Pettitt²; Stack v Dowden³, and Abbott v Abbott⁴ which all speak to the parameters on what the court must consider in making a determination of the existence of constructive trust in favour of a party. Counsel submitted that the claimant has met those criteria and that his evidence is clear in that regard and that as such he is entitled to his prayer as sought with the dismissal of the defendant's counterclaim with an order in costs.

The Defendant's Case

- [45] Counsel for the defendant in his submissions proffered several issues for consideration by this court, namely the applicability of two broad issues of constructive trust and proprietary estoppel. This court notes that on occasions counsel conflates the principles of promissory estoppel and proprietary estoppel, but for the purposes of this judgment will limit itself to the consideration of proprietary estoppel which in this court's mind is the applicable principle.
- [46] Counsel submitted that even though the claimant may have assisted the defendant by providing minor electrical work and casual labor during the expansion of the house, those actions could not and did not give rise to an equitable interest in the defendant's home. To buttress his submission, counsel cited the authorities of Burns v Burns⁵, Winkworth v Edwards⁶, and Lloyds Bank v Rosset⁷.
- [47] Counsel relied on the statement contained in Burns v Burns, where the court stated the following in part that "... the court is only entitled to look at the financial contributions or their real and substantial equivalent to the acquisition of the house; that the husband

right of way, natural right of lights, compulsory acquisition, resumption, entry, rights acquired through legal processes, leases, unpaid charges, et al.

² (1970) AC, 777

³ (2007) UKHL, 17

⁴ (2007) UKPC, 53

⁵ [1984] Ch 317

⁶ [1987] 1 All ER 114

⁷ [1991] 1 AC 107

may spend this weekend redecorating or laying a patio is neither here nor there", which principle was reaffirmed in **Winkworth v Edwards**⁸.

- [48] In relying on the authority of **Lloyds Bank v Rosset**, counsel adopted the learning of the court and contended that having failed to make any direct contributions to either the acquisition of the property or even mortgage payments that the claimant had failed to cross the threshold to have a constructive trust found in his favour.
- [49] Counsel argued that the defendant's evidence of having solely acquired the original wooden house was unchallenged and enjoined this court to reject the bare evidence of the claimant that he had contributed \$1,000.00 monthly towards the repayment of the small loan obtained by the defendant to expand the home. Thus having failed to prove any contribution or certainly any substantial or meaningful contribution, counsel contended that the claimant had not even come close to establishing the existence of a constructive trust in his favour.
- [50] In his submissions counsel strenuously contended against any finding of a beneficial interest in favour of the claimant as setting a precedent against unwarranted claims. Counsel emphasized that the claimant's assistance was rooted in the nature of the relationship he enjoyed with the defendant at the time without the requisite common intention of acquiring a beneficial interest in the defendant's home.
- [51] Furthermore, counsel contended that there can be no constructive trust declared in circumstances where it was clear that the intention of the purported contributor was not to gain beneficial interest if, for example, the contribution was by way of a loan or gift⁹. To lend support to his argument counsel cited the authority of **James v Thomas**¹⁰ where Sir John Chadwick stated the following:

"... in the absence of an express post-acquisition agreement, a court will be slow to infer from conduct alone that parties intended to vary existing beneficial interests established at the time of acquisition."

- [52] Thus, in the submission of counsel for the defendant, the courts should be slow to determine the conduct of cohabitants as determinative that beneficial interests of some sort should be acquired.¹¹ Further, it was clear, as submitted on behalf of the defendant that the claimant must show that he acted to his detriment, as common intention is not the sole criterion of constructive trust. Counsel stated that this principle was outlined in **Lloyd Bank Plc v Rosset** and a similar requirement was established in the case of

⁸ where the House of Lords held that Ms. Winkworth having contributed 8,600 euro would have not sufficed to give her any additional equitable interest in the property, in that, at the time when Ms. Winkworth made the payment into the account the purchase price for the property had long been paid.

⁹ Re Sharpe (A Bankrupt) [1980] 1 WLR 219.

¹⁰ [2007] EWCA Civ 1212

¹¹ Morris v Morris [2008] EWCA Civ 257

Gissing v Gissing¹². In the instant case, it was contended that there was no evidence that the claimant had acted to his detriment. He did not live on or occupy the property before the defendant's chattel house was taken to the property nor was there any evidence as to how long the claimant may have occupied the defendant's property if he did so at all and in what capacity or that he had taken any steps prior to the defendant moving the disputed house there that he had undertaken any steps to utilize the land for himself and that he had therefore given up a benefit to him to amount to detriment.

- [53] In relation to the principle of proprietary estoppel, counsel submitted that this was applicable in all the circumstances of the case. The defendant therefore contended that her claim fell squarely within the provisions of this principle, she being able to establish a sufficient link between the claimant's promise to sell the land to the defendant and the defendant's actions thereafter, which she relied on to her detriment regardless of whether or not the promise was reduced to writing.
- [54] Counsel contended that once the defendant could prove that there was detrimental reliance suffered as a result of the promise expressed, then she was entitled to rely on the principle of law, and it would be inequitable for the claimant, to renege on his promise so made.
- [55] Counsel therefore argued that the defendant's detriment was evidenced through the defendant's costly and substantial renovation works on the claimant's land making it a permanent feature for which she was solely responsible.
- [56] It was therefore clear from the evidence, that claimant knew or ought to have known that the defendant was acting on his promise when she moved her home to his land. Additionally, he also encouraged her to make the additions and renovations in concrete to her home and he made no effort to stop her at any time. It is therefore clear, that the claimant allowed the defendant to act to her detriment and now the defendant cannot move her home without it being destroyed. Accordingly, the defendant prays that the court orders the claimant to honour his promise made to the defendant.

Court's Considerations and Analysis

- [57] This court is of the considered opinion that the case at bar raises the issues of constructive trust and proprietary estoppel. Accordingly, the issues which fall to be determined are:
1. Whether there is evidence of common intention between the parties for the claimant to acquire a beneficial interest in the defendant's home; and even if that is not proved,

¹² [1971] AC 886

2. Whether an equity can be established in favour of the defendant under the principle of proprietary estoppel in the circumstances of this case.

Common Intension /Constructive Trust

- [58] Under this issue, the question with which this court is concerned is whether the claimant's contributions to the property give rise to a common intention justifying an entitlement to a beneficial interest in the defendant's home. The principle of constructive trust underscores the court's ability to remedy property issues where justice demands the recognition of certain rights and interests in the property. Unlike a trust that is created intentionally, a constructive trust is imposed by the court to rectify unjust enrichment or ensure the parties' contributions or intentions are appropriately acknowledged.
- [59] Intentions are usually formulated in instances where parties have settled on proprietary rights in the joint endeavour of the acquisition or any financial or other contribution to an asset that belongs to the other party. Thus, the legal title is vested in one party for ease of convenience and the other party has acted to his or her detriment upon that understanding.
- [60] The essential components for establishing constructive trust hinge on the finding of two main ingredients (1) a shared intention between the parties that both parties would have a beneficial interest in the acquired property; and (2) the claimant acted to his detriment in alignment with that common intention.
- [61] 'Common intention' can be proven in one of two ways. First, through explicit evidence of an agreement between the parties, indicating that the person without a legal title is intended to have a beneficial interest in the property. Second, in the absence of an express agreement, if the parties' actions demonstrate an intention for joint ownership, the court will infer a common intention.
- [62] This was illustrated in the seminal case of **Stack v Dowden**¹³. In that case, the House of Lords clarified the principle of constructive trust in the context of cohabiting couples (whether married or unmarried), and division of property which emphasized the importance of ascertaining the parties' common intentions regarding ownership of property, whether expressed or inferred by conduct which would give rise to the creation of such a trust. The court stated that "the search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in light of their ***whole course of conduct in relation to it***¹⁴." (Emphasis mine).
- [63] Thus, it is not only in circumstances where there has been an expressed indication that the parties will share a beneficial interest but more often than not, an inference of a

¹³ (2007) UKHL 17

¹⁴ Para [69]

common intention can also be drawn from the conduct of the parties in the circumstances of each case.

- [64] Such agreement can be orally or in writing but in either case, the court must assess the extent of the detriment suffered. However, in the absence of an express agreement, as in this case, the court's determination must be based on an assessment of the conduct of the parties since they chose not to commit the terms of the agreement in writing. Thus, the issue must then be, can a reasonable inference of common intention be made showing that the party acted on that intention to his or her detriment. In the authority of **Lloyds Bank Plc** *supra*, Lord Bridge of Harwich recognised that there is a fundamental difference in the treatment of the evidence before the court where there is an express agreement between the parties and where there is not. In paragraphs 132 and 133 of his judgment, he made the following pronouncement in part:

“... 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.”

- [65] In assessing the conduct of the parties, the courts must therefore take a broad and holistic approach as illustrated in the oft-cited authority of **Gissing v Gissing** *supra*, which dealt with the broader context of shared intentions and contributions during the joint endeavour of the family home. In that case, Lord Diplock espoused the principle that both financial and non-financial contributions could give rise to a beneficial interest in jointly acquired property.
- [66] Though a finding of direct financial contribution to the acquisition of the home will readily infer a common intention between the parties, it is pellucid from the authorities that there are instances however where the absence of financial contribution does not defeat a claim of beneficial ownership. The authority of **Gissing v Gissing** therefore does not align with the defence counsel's assertion that anything less than a financial contribution will do.
- [67] Further in the authority, Lord Diplock then went on at page 170 of the judgment to elucidate what is relevant to formulate an inference of a common intention. He therefore indicated as follows:

“... the relevant intention of each party is the intention that 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..."

- [68] The test is, therefore, one of objectivity, and relevance is placed on what a reasonable person would have understood from the words or actions of each party involved, rather than their personal, unspoken intentions. If one party reasonably interprets the other's words or conduct in a certain way, that interpretation is significant. However, a party is not bound by inferences drawn by the other party unless those inferences are reasonable based on what was communicated.
- [69] The understanding of the intention between the parties must be that of a reasonable man. If from the evidence it can be garnered that the claimant, based on the defendant's conduct, reasonably understood that he should share an interest in the home and on that understanding acted towards his detriment or significantly altered his position, then there was a common intention between the parties irrespective of whether or not the defendant consciously formulate that intention.
- [70] It is worth noting that the onus is on the party who asserts a beneficial interest in property to prove that there was a common intention between the parties to share a beneficial title.¹⁵ In the circumstances, this burden lies with the claimant. From the evidence, it is axiomatic that there has been no express agreement between the parties for the claimant to share a beneficial interest in the defendant's home. Thus, in this regard, for the claimant to discharge this burden he must adduce evidence on which this court can infer or impute a common intention between the parties.
- [71] In following the learning from **Lloyds Bank Plc. v Rossett and Another** *supra*, the court, in assessing the conduct of the parties will seek to determine the conduct two-fold, as to whether there is a common intention coupled with detrimental reliance.
- [72] Having assessed the evidence adduced by both parties, the court accepts that at some point during the relationship, the claimant spent substantial periods at the home of the defendant in circumstances that amount to cohabitation by the parties. This is especially so when the court accepts that the claimant's residence at Camp Blizzard ended at some point in 2014.

¹⁵ Ibid. See para [56]

- [73] Indeed, it is accepted by this court on a balance of probabilities that the claimant at some point had a key to the defendant's home, it being a very unlikely scenario that the claimant who was in a relationship with the defendant would have had to call to obtain entry to the home of his "person". Further, on his own evidence, the claimant did indicate that post-2020, he no longer had keys once the renovations were substantially complete, the natural inference being that he did previously. The court is fortified in this opinion when from the evidence of the defendant herself, it was clear that the claimant had placed certain appliances in the home including a bed, which in her words, she no longer sleeps on, and had items of clothing up to the point in time when there allegedly were proceedings in the Magistrate's court which resulted in the claimant apparently being ousted from the home.
- [74] Having accepted the evidence of the claimant that at least until 2020 he had key access to the home of the defendant; this court finds that, at the very least, up until 2020 the claimant resided with the defendant at the disputed home.
- [75] Despite the court accepting that the claimant did at some point live with the defendant, this is not, in this court's mind sufficient to establish a common intention between the parties regarding property rights. Cohabitation, in and of itself, does not automatically imply a shared intention. It is a factual circumstance that may be considered in the broader context of the relationship as illustrated in Gissing v Gissing *supra*. Furthermore, this court sees that at least after 2020 there was some seminal event that changed the tenor of the relationship which underscores the lack of intention at the time of the renovations having been close to completion for the parties to share in the property.
- [76] Courts often start with a presumption that cohabiting parties do not share an intention to create legal rights in each other's property. Individuals in a cohabiting relationship often value their financial independence. Absent explicit evidence of a shared intention, courts are hesitant to impose property-sharing arrangements that the parties might not have intended. While cohabitation is a relevant factor, it is not conclusive evidence of a common intention to share property.
- [77] The rationale is cohabiting couples may have different expectations and understandings about their arrangements and intentions which may change during the course of their relationship. Some may intend to share property, while others may have completely separate arrangements. The nature of relationships can evolve and a static finding of cohabitation may not reflect the intentions of the parties at the relevant time.
- [78] The court is also mindful that in instances of cohabiting couples, it is common for both parties to do such chores around the house to make the home more accommodating for their common use and enjoyment. Thus, in assessing the evidence where work has been done by the party who asserts a beneficial interest, the court must be mindful to not impute any common intention from works that are reasonable domestic activities. There

is a line to be drawn where there is evidence of works being done to make the home more pleasant and works that have been done as a means to an end in affecting proprietary rights. This position was exposed in the authority of **Pettitt v Pettitt** *supra* by the House of Lords, who in overturning the Court of Appeal, held that:

“the improvements made to the home do not entitle the husband to an equitable interest in the property. The Court held that the voluntarily undertaken improvements and decorations of a family home served the purpose of making “the home pleasanter for their common use and enjoyment” (826). In the context of a family home, the Court cannot impute an implied common intention between spouses that regular and/or leisure undertakings to decorate a home can alter existing proprietary rights in the home; the conduct of the spouses does not give rise to such an intention and it was only claimed after matrimonial difficulties occurred. The Court also dismissed an argument that there is a presumption to treat payments made from a husband to a wife as advancements as outdated and motivated by policy concerns of a different social era. Thus, the Court held that the husband had no equitable interest in the matrimonial home.”

- [79] When this court considers the case at bar, it is clear that in any event, the claimant failed to provide any evidence as itemized in the extract above to this court of any such relationship existing in the context of the disputed home. Thus, in this court’s mind, in addition to the inability to rely on cohabitation as a fact in support of the proof of a common intention, this court has nothing before it upon which it could have even considered peripherally that the conduct of the parties in living together was an indication as to how they may have ordered their affairs.
- [80] Indeed, although it may be accepted that the parties lived together, there is no further evidence that the parties approached their situation and the properties as a unit. There was no evidence of obtaining the loan for the renovations together, there was no evidence of the claimant paying towards the utilities and in fact, it was unchallenged that all utility bills were in the name of the defendant, no evidence that any materials were bought for the renovations rather the claimant admitted that he made no direct payment to those. There was no evidence that the claimant even knew the cost of the renovations, or the extent of the renovations, in fact, he knew no details of the same. Indeed, there was no evidence that these parties conducted themselves in any way which evinced that they were working together with a common goal and that goal being the sharing of the propriety interests of the respective properties.
- [81] While this court accepts that the claimant did contract with Mr. DeSouza for some electrical work, and admitted by the defendant for which he was financially responsible, and that he was involved periodically and sporadically in some of the manual work involved over the period of the renovations, together with individuals that he brought to the premises, in this court’s mind, this court is of the opinion that this was done because

the parties were “together” but not because the claimant or the defendant had intended that the claimant would obtain any benefit therefrom.

- [82] As it concerns monetary expenditure on the expansion, this court considers that the evidence regarding the claimant's involvement in the project however can be considered by and large to be negligible from the purchase of electrical fixtures (substandard or not) to the building materials that could not be linked to the timeline of the actual renovations and transportation costs that he covered periodically.
- [83] In direct contradiction, this court finds that it has been established on a balance of probabilities that it was the defendant who predominantly bore the financial cost of expanding the home by securing a loan for the project, with expenditures exceeding \$30,000.00. It is also the uncontroverted evidence that the defendant covered payments for various professionals involved in the project, including Mr. Brown (the second electrician), the mason, carpenter, plumber, and workmen.
- [84] The court notes that the defendant solely shouldered the risk involved in obtaining a loan. The claimant's aversion to a joint decision to fund the expansion out of pocket lacks substantiation, particularly in light of the disputed \$1,000.00 contribution, of which \$500.00 is purportedly given towards the repayment of the loan. The court therefore finds the defendant's account more believable on this issue.
- [85] Bearing this in mind and in taking a holistic approach and having found there was no shared intention this court considers that it would be purely academic to consider whether there was any detrimental reliance on the part of the claimant. However, for the sake of completeness, this court is satisfied that the claimant led no evidence showing any such reliance. It could of course be argued that the giving up of the property was the reliance, but it will be recalled that in cross-examination he did admit that he had not had any plans for the land previously to the relocation of the disputed home, that he had not taken any active steps to develop the same to his benefit and although it is clear that his having given permission may ultimately affect his rights to the said property, if he is deprived of the same then he must be compensated for it. In this court's mind, that could not amount in any event to the detrimental reliance required for him to prove.
- [86] Thus in scrutinizing the circumstances presented, this court finds that the conduct of the parties, combined with the absence of common intention, actual or inferred, and the absence of detrimental reliance on the part of the claimant does not sufficiently support the inference of a constructive trust in favour of the claimant in the home of the defendant. In saying so, this court must of course note the unique circumstances of each case and finds that the factors in this case do not indicate a shared understanding of property ownership between the parties.

- [87] Having so determined, this finding equates to a dismissal of the claimant's claim. However, the court must now go on to consider whether the defendant can avail herself of the principles of proprietary estoppel.

Proprietary Estoppel

- [88] An estoppel is a form of equitable relief used to prevent an individual from reneging on their commitment when allowing them so to do would lead to unfairness or injustice. The doctrine of proprietary estoppel recognizes that in certain circumstances, the strict legal rights of the parties may yield to equitable considerations, compelling the court to intervene to prevent injustice. This equitable principle, deeply rooted in fairness and preventing unjust outcomes, becomes pivotal when one party makes assurances or representations regarding an interest in property, leading the other party to rely on those assurances to their detriment as in the contention of the defendant in the case at bar.
- [89] Proprietary estoppel therefore arises when three key elements are present: an assurance or representation, reliance on that assurance to the detriment of the claimant, and unconscionability in allowing the assurer to resile from the assurance.
- [90] In the authority of **Mohammad v Gomez and others**¹⁶ Lord Carnwath in paragraph 24 of his judgment cited with approval the authority of **Thorne v Major** [2009] UKHL 18: [2009] 1 WLR 776 where Lord Walker articulated the following:

“The doctrine is based on three elements, although they express them in slightly different terms: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance ...” (para 29).

- [91] The onus is therefore on the defendant in her counterclaim to prove that the three fundamental elements are present to succeed by way of her counterclaim for proprietary estoppel, that there was a representation or assurance, that she placed reliance on that assurance, and that she suffered detriment as a direct result. This court will embark on examining each element intrinsic to proprietary estoppel and its manifestation in the circumstances presented to this court by the parties. Each element must be assessed in the totality of the circumstances. This position was articulated in the judgment of **Inwards v Baker** and was echoed in the judgment of **Theresa Henry et al v Calixtus**¹⁷.
- [92] In the authority of **Theresa Henry et al v Calixtus Henry**¹⁸ Sir Jonathan Parker had this to say:

¹⁶ [2019] UKPC 46

¹⁷ [2010] UKPC

¹⁸ Ibid.

“the existence and extent of any equity arising under the doctrine of proprietary estoppel is dependent on all the circumstances of the particular case, including the nature and quality of any detriment suffered by the claimant in reliance on the defendant’s assurance”.

- [93] Lord Denning MR in Inwards v Baker⁵ relying on Plimmer v Wellington Corpn (1884) 9 App Cas 699, 710-11) stated it thusly:

“... equity arising from the expenditure on land need not fail merely on the ground that the interest to be secured has not been expressly indicated ... the court must look at the circumstances in each case to decide in what way the equity can be satisfied ...”

- [94] The last two (2) elements will be dealt with conjointly for convenience.

Assurance/ Representation

- [95] The threshold requirement under this heading is less than that of promissory estoppel. It has been determined by replete authorities that the assurance in proprietary estoppel cases need not be unequivocal for it to exist, however it should be sufficiently clear and must be intended to be acted on. That is, the representation must be made “...in such circumstances as to convey an invitation to act on it.”¹⁹ The representation should therefore be sufficiently clear and be looked at in the totality of the circumstances. In that light, the House of Lords in the leading case of Thorner v Major²⁰ held the following in part:

*“ to establish proprietary estoppel, in a particular case, the relevant assurance had to be clear enough. What amounted to sufficient clarity was dependent on context. The promise had to be unambiguous and **had to appear to have been intended to be taken seriously**. Taken in its context, it had to have been a promise which **one might reasonably expect to be relied on by the person to whom it had been made**. Proprietary estoppel looked backwards from the moment when the promise fell due to be performed and asked whether, **in the circumstances which had actually happened, it would be unconscionable for the promise not to be kept**. (Emphasis mine) ...”*

- [96] In considering the evidence, the act of the defendant moving her house onto the claimant’s land inherently involved an understanding or assurance that she could reside there with the claimant’s approval and upon his invitation. This was something that the claimant could not deny at trial.

¹⁹ Sidney Bolsum Investment Trust v E Karmios & Co (London) Ltd [1956] 1 All ER 536 st 539 per Denning LJ

²⁰ (2009 UK HL18)

- [97] In considering the defendant's circumstances, particularly her familial responsibility in providing not only a home for herself but for her child at the time, and as this court can imagine, her efforts to acquire the chattel portion of the house, by holding two jobs, and the inference which can reasonably be drawn that the defendant despite the pressing circumstances might have been able to acquire a different parcel of land adds weight to the analysis.
- [98] Against this background, the contention by the claimant that the assurance had been conditional and that the agreement was that the defendant would only place the house there and then be sold to the claimant if the parties found themselves in a dispute makes nonsense of the logic of the situation in all the circumstances and highly improbable and it is not accepted by the court on a balance of probabilities.
- [99] The principle from **Thorne v Major** *supra* suggests that the promise, in its context, should be one that might reasonably be expected to be relied upon by the person to whom it was made. The defendant's dedication to acquiring the property, and her circumstances of needing to depart from her previous residence, this court accepts that it was reasonable in the circumstances to expect that the defendant would have relied upon the promise which she did. This court therefore finds that the claimant made an unconditional representation to the defendant.
- [100] The next questions must therefore be, did she then act upon it, and having done so was it to her detriment.

Detrimental Reliance

- [101] The evidence of an assurance or representation without more is not enforceable against the person who made the representation. There must also, more importantly, be evidence of reliance in the kind of detrimental reliance. Accordingly, the evidence of detrimental reliance is crucial for the creation of an equity, as it is the detrimental reliance that makes it unconscionable for the promisor to resile from his otherwise unenforceable agreement.
- [102] The authority of **Dobson v Griffey**²¹ cited **Thorne v Major** *supra* with approval on the issue of assurance or representation and went further to opine on detrimental reliance. The following was stated in paragraph 24 of the judgment:

“... First of all, the defendant landowner by his words or conduct makes an assurance to or creates an expectation in the claimant. It need not be the promise of a specific right or interest, as long as it is clear enough in all the circumstances: see per Lord Walker in *Thorne v Major*[2009] 1 WLR 776, [29].

²¹ [2018] EWHC 1117 (Ch)

At this stage, this is not an enforceable obligation. It does not comply with the relevant formalities rules. But, assuming that it is intended to be relied upon by the claimant, and it is relied upon, to her detriment, such that it becomes unconscionable for the defendant to resile from it, an equity is thereby raised against the defendant. The equity thus created is an interest in the property that does not need to comply with any relevant formalities rules because it operates by way of imposing a trust on the defendant to satisfy it, ... The claimant is then entitled to an appropriate remedy to satisfy the equity. This may be an order for the defendant to perform the promise itself. Or it may be something else, perhaps the payment of money by the defendant to the claimant.”

- [103] There is however no yardstick as to how much detriment is “sufficient detriment” but it certainly must be more than trivial²². It has therefore been widely and readily accepted, that where money has been expended, that act can lend itself to satisfy the criterion of detrimental reliance. An example can be found in the authority of **Inwards and Others v Baker**²³ where a father told his son that a parcel of land would be left to him in his Will. In reliance upon that representation, the son built a house on the land and lived in it for 30 years before his father died. After the father’s passing, the land did not pass to his son via the Will. An estoppel was raised preventing the son from being evicted from the land and preventing the father from being able to renege on the representation he made. The following was held in part by the court:

“... where a person expended money on the land of another in the expectation, induced or encouraged by the owner of the land, that he would be allowed to remain in occupation, an equity was created such that the court would protect his occupation of the land, and the court had the power to determine in what way the equity so arising could be satisfied.”

- [104] The test to be applied is therefore “whether it appears unjust or inequitable that the representor should not be allowed to resile from his representation having regard to what the representee has done or refrained from doing in reliance on the representation.”²⁴
- [105] The case here is not a complex one. It is the uncontroverted evidence that the defendant not only moved to the land with the claimant’s consent but also took significant steps to enhance and convert the chattel house into a permanent fixture without any demurer on the part of the claimant to prevent her from doing so. This transformation involved obtaining a loan, which she diligently managed through monthly salary deductions, showcasing her commitment to the property. Notably, the defendant actively participated in the expansion by personally handling financial responsibilities, such as paying for building materials and compensating the workmen involved in the construction. These

²² **Jones v Watkins & Ors** 26/11/87 CA UK (unreported)

²³ (1965)2QB 29

²⁴ Jones v Watkins & Ors

actions further underscore her dedication and financial investment in the property. This court is therefore satisfied that the defendant has satisfied the criterion of detrimental reliance in the totality of the circumstances.

[106] The defendant invested significant resources and actively contributed to the property's development, culminating in the transformation of the chattel house into a permanent fixture. The defendant's devoted allocation of time, financial resources, and effort, all predicated on the claimant's promise, would result in manifest injustice if the claimant were permitted to resile on the agreement.

[107] However, this determination is not the end of the matter, because once the equity has been established, the next step is to consider the extent of that equity.²⁵ In doing this part of the assessment the court must be guided to do so cautiously and ensure to achieve "the minimum equity to do justice to the [defendant]"²⁶

[108] This court has been provided with a valuation from both the claimant and the defendant which showed a difference of \$440.80 as between them with the defendant providing the higher valuation for the land by Denis Parker.

[109] In the circumstances, the court having found that the defendant is entitled to rely on the principles of proprietary estoppel and that in light of the circumstances that the house is now permanently affixed to the land, the court is satisfied that the defendant should be at liberty to buy the land of the claimant without any benefit accruing to her for any contribution she has claimed thereto. Indeed, in so finding, this court, although accepting that the detriment suffered by the defendant is significant, must also recognize that she has accrued a benefit by having had access to the land rent-free for the last seven-plus years and again, with the implicit permission of the claimant, to improve her home to not inconsiderable value.

[110] The defendant shall therefore pay to the claimant the sum as stated for the land together with the cost attributed to the fence and the driveway in the valuation of Denis Parker dated 2nd November, 2021²⁷ and upon such payment, the clamant shall transfer the title of the said land to the defendant in her sole name.

Conclusion

[111] The order of the court is therefore as follows:

1. The claim of the claimant is dismissed in its entirety.

²⁵ Henry v Henry

²⁶ Henry v Henry

²⁷ TB 3A Bundle of Agreed documents filed 26/6/2023

2. It is therefore declared that the house located in Lightfoot West in the Parish of Saint John's Antigua and Barbuda situated on land located in Lightfoot West more particularly described at the Land Registry as Registration Section: Central; Block: 14 – 2090B; Parcel 171; is solely owned by the defendant.
3. The prayer that the defendant has a 30% interest in the land situated in Lightfoot West in the Parish of Saint John's Antigua and Barbuda more particularly described at the Land Registry as Registration Section: Central; Block: 14 – 2090B; Parcel 171 is refused.
4. The claimant is ordered to sell the defendant his interest in the land situated in Lightfoot West in the Parish of Saint John's Antigua and Barbuda more particularly described at the Land Registry as Registration Section: Central; Block: 14 – 2090B; Parcel 171 pursuant to the valuation report of Denis Parker dated the 2nd November, 2021 to include the sums for the walkway and the fence;
5. Interest on the said sum due to the claimant from the date of this judgment to payment pursuant to the Eastern Caribbean Supreme Court Act, Cap.143
6. This court considering that this was a matter that could have been settled if reason had prevailed orders that each party to bear his or her own costs.

Nicola P. Byers
High Court Judge

By the Court

Registrar