

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

Claim No. 83 OF 2020

BETWEEN:

SHEMELIA ADAMS
of Belle Vue

Claimant

AND

VERNOL WARREN
of Belle Vue

Defendant

Appearances:

Pauline A David of Saunders & Huggins Chambers for the Claimant

Duane Daniel and Chante Francis of Duane Daniel Chambers for the Defendant

2022: July 26;

October 3;

November 4;

2023: March 13;

JUDGMENT

[1] **Stephenson J.:** The claimant and the defendant were once involved in what I shall call an intimate domestic relationship which bore them two sons.

- [2] During the relationship a house was built at Belle Vue in the island of St Vincent. This property was once occupied by both parties along with their children as their family home. The parties lived on the premises from March 2009 when the house was constructed up until their relationship soured, and thereafter, the claimant remained in the house up until 30th July 2020 when the interim injunction she obtained to prevent the defendant from evicting her from the house was dismissed by Cottle J.
- [3] The claimant seeks a declaration from this court that she has at least a 1/3 proprietary interest in the house.
- [4] The Claimant contends that she assisted in the building of the house to her detriment including moving out of her family home to live with the defendant in the house on the common understanding and intention that the house would be their family home.
- [5] It is the defendant's contention that the claimant did not make any contribution towards the construction of the house and neither did the claimant act to her detriment in anyway. The defendant also denies that the claimant was his common-law wife as she contends, and that there was never any common intention that the property would be the family home of the parties, and in fact the house was never their family home.

The issues:

- [6] This issue to be decided is whether the claimant has a beneficial interest in the property owned by the defendant, and if, what would that interest be?
- [7] Legal ownership of the property is evidenced by Registration Deed number 629/2008 in the name of the defendant. ("the property")

The law:

- [8] A person who does not have the legal title to a property and seeks to claim a beneficial interest in the property must prove that there was a common intention between the parties that they should share the beneficial title, and on that common intention, they acted to their detriment.
- [9] How is common intent established? It is established by direct evidence of an agreement between the parties that the person who does not have legal title to the land will have a

beneficial interest in the property and where there is no express agreement that the parties have conducted themselves in such a way as to show that they intend joint ownership of the property. **Re: Hussey -v- Palmer**¹

[10] Once the person seeking to establish that interest can show the court on a balance of probabilities that there was that common intention that the applicant should have an interest in the property by any act done by her to her detriment relating to the joint lives of the parties is sufficient detriment to qualify her for a beneficial interest. (**Re: Paul Webster -v- Lois Dunbar**², in this case the court of appeal applied the test as adumbrated in **Grant -v- Edwards and another**³, **Lloyds Bank PLC -v- Rosset and Another**⁴ and the court of appeal distinguished the locus classicus as we know it **Eves -v- Eves**⁵.

[11] The onus is on the claimant being the non-registered owner of the property in the case at bar to show that she has an interest in the said property. This she must do on the civil standard that is on the balance of probabilities.

[12] The claimant has admitted that she has made no financial contribution towards the building of the house; however, she contends that her contribution is in kind. It was also submitted for and on behalf of the claimant that there was no “articulated agreement between herself and the defendant that she has a beneficial interest in the property”.

[13] The claimant is asking this court to find that her beneficial interest in the property arises from her shared intentions with the defendant “actual and inferred or imputed ...in light of their whole course of conduct in relation to it”⁶. Counsel Ms. Paula David on behalf of the claimant cited and relied on the dicta of Baroness Hale in the case of **Stack -v- Dowden**⁷ where she said after reviewing the development of the law in this area “The search is to ascertain the parties’ shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it”⁸

¹ [1972] 3 ALL E R 744

² HCVAP2011/004 (Anguilla) Unreported

³ [1986] 2 ALL E R 562

⁴ [1991] 1 AC 107

⁵ [1975] 3 ALL E R 768

⁶ See paragraph 1 of the Claimant’s closing submissions filed on the 4th November 2022

⁷ [2007] 2 WLR 831

⁸ Ibid at paragraph 60

[14] This court pauses at this point to note that in **Stack -v- Dowden** as quoted by counsel Ms.

David, the court was considering the beneficial interest of a party who was registered as a joint owner. This court notes the words of the learned Judge in paragraph 61 when she made reference to the case of **Oxley -v- Hiscock** where as in the case at bar the property was registered solely in the name of one of the cohabitants. In that case (**Oxley**) it was held that the claimant had first to “surmount the hurdle of showing that she had any beneficial interest at all, before showing exactly what that interest was. The first could readily be inferred from the fact that each party had made some kind of financial contribution towards the purchase”. In the case at bar it is noted that the claimant has not made a claim that she made any financial contribution to the building of the house subject to the matter in the case at bar.

[15] It is to be repeated that it has also been submitted on behalf of the claimant that there was not an “articulated agreement between herself and the defendant that she was to have a beneficial interest in the property.”⁹

[16] This court notes the words of Chadwick LJ as quoted by Baroness Hale in her judgment when it was said

“...It must now be accepted that ... 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.”¹⁰

[17] In the case at bar there is no doubt that the defendant received the parcel of land as gift, there is no evidence that he bought the said land. There is also no doubt that a house was constructed on the land whilst the parties were involved in a relationship as the claimant was pregnant with the defendant’s child during construction. The question really for the court to ponder is what, having regard to the whole course of dealing between the parties herein, would the claimant be entitled to if any. The claimant is asking this court to find that based on the evidence before the court that she is entitled to a 30% interest.

⁹ Para 1 of the claimant’s closing submissions op cit

¹⁰ Baroness Hale quoting para 69 of Chadwick’s LJ judgment at paragraph 61 of her judgment in **Stack -v- Dowden**

[18] Counsel David on behalf of the claimant pointed to the evidence and submitted that her client knew about the gift made to the defendant in spite of the defendant's denial of same and that there was a substantial relationship between the parties during which her client bore two children for the defendant.

[19] Counsel Ms. David on behalf of the claimant pointed to the defendant's evidence about when the relationship commenced and was as this court sees it, quite generous to the defendant when counsel noted that the defendant in his evidence stated that the relationship commenced in 2009 but pointed to the fact that the house was built in 2008 and during that time the claimant was pregnant with his child, so clearly in this court's view that the relationship predated 2009 and maybe, just maybe as counsel David submitted the defendant may have conflated the questions put to him as to when he lived with the claimant and when his relationship with the claimant started.

[20] This court cannot help but note that Counsel may have misunderstood the defendant as in his affidavit sworn in defence to the fixed date claim filed by the claimant he stated that his romantic relationship with the claimant was from 2003 to 2012.

[21] It is however quite clear to this court that the defendant in his testimony before the court was bent on minimalizing his relationship with the claimant and on any contribution she may or may not have made to the building of the house or any common intention between them which can be construed as her having an interest in the home.

[22] Counsel for the claimant pointed out that the defendant in his evidence before this court did not deny that he, the claimant and his sons lived in the house, which was built, as a family.

[23] What evidence has the claimant produced to this court to support her claim for her beneficial interest?

[24] It was submitted on behalf of the claimant that:

- a. The decision to build the house on the land at Belle Vue was made by both her and the defendant so they could live together as a family.
- b. That she contributed labour towards the construction by helping to dig the foundation and to move sand, stone and steel. This court cannot help but note that the claimant

was admittedly pregnant at the time of construction, after the foundation stage, and therefore any physical assistance rendered would have been minimal.

- c. The claimant also stated in her evidence that she secured the assistance of her brother Wayne Adams and Ron Johnson who each gave one day's labour towards the project. Again, this court is constrained to note that this assistance is minimal in the big picture of the construction of the dwelling house.
- d. It is noted that her cousin Garvey Adams on the other hand contributed significantly to the labour. This of course is to be weighed against the defendant's evidence that it is he who asked Garvey Adams to assist in the building of the house and that this has nothing to do with the claimant. The defendant sought to tell this court that he and Mr. Adams worked together before and that Mr. Adams' working on the house had nothing to do with the claimant.
- e. The claimant contended that she and the defendant cooperatively decided the paint as well as the tiles for the house and that they also decided the design of the kitchen together. It is to be noted that the defendant denied this and stated that he solely selected the paint, tiles and design of the kitchen, and that the claimant had nothing to do with this.
- f. That she would not have contributed to the construction of the house or move from her mother's home where she had a secure accommodation if she had not been led to believe that she was moving into what was meant to be her and the defendant's family home. Counsel on behalf of the claimant pointed out to this court that it is the claimant's evidence that there was a time when the claimant moved out of the home and the defendant came and asked her to "come back home".
- g. It was the claimant's evidence that when the construction of the house commenced in 2008 she assisted in digging the foundation and lifting blocks. She also cooked for the workmen. The defendant denied this and stated in his evidence that this could not be possible as the claimant was pregnant at the time, and he would not have had her doing that kind of laborious tasks in her condition. Under cross examination the claimant stated she found out that she was pregnant after the foundation was done

and the child of that pregnancy was born on the 29th September 2009 which bears out the claimant's evidence that she was able to assist physically with the preparation of the foundation of the house and she was not pregnant as in December 2008 as contended by the defendant. This court accepts the evidence of the claimant in this regard. (Emphasis mine)

[25] In her analysis of the evidence offered by the defendant in this matter, counsel Ms. David's submissions could be briefly summed up as that the evidence led for and on behalf of the defendant was clearly structured with attempt to prove to this court that the claimant made no contribution whatsoever to the construction of the house either physically or by cooking for the workmen as claimed by the claimant.

[26] Counsel reviewed the evidence adduced and pointed out to the various holes in the defendant's evidence and submitted that the evidence was an over-elaborate attempt to deny that the claimant even cooked or even ever visited the worksite.

[27] Counsel for the claimant Ms. David asked the court to view the defendant's evidence with suspicion and noted that he even sought to some extent to limit his own participation in the building process by telling this court he more or less gave up the ultimate decisions as to how the house would look to his contractor because he saw previous work done by him and trusted him.

[28] Counsel submitted that the evidence led by the defendant should be viewed with suspicion and this court understands her to be saying that the defendant's evidence ought not to be totally accepted by this court.

[29] Counsel Ms. David in her submissions on the law cited and relied on the Privy Council Decision emanating out of our jurisdiction (Antigua & Barbuda) **Abott -v- Abott**¹¹. It is noted that this matter concerned the division of property upon dissolution of a marriage however, the court's considerations are helpful in the case at bar.

¹¹ [2007] UKPC 53, 70 WIR 183

[30] In **Abbott** it was held by the Privy Council that in deciding on property disputes between husband and wife, the first and fundamental question should always be resolved was whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs there had at any time prior to acquisition, or exceptionally at some later date been any agreement, arrangement or understanding reached between them that the property was to be shared beneficially. This was applied by the Privy Council in their ruling on the matter.

[31] In a subsequent case of **Romig Websterby Michael -v- Heather Michael**¹² (This case was not cited by counsel in the case at bar but applied the Privy Council Ruling in **Abbott -v- Abbott** and likewise it was a question of division of property upon divorce) it was held that the trial Judge correctly identified and stated the applicable principles as enunciated in **Abbott -v- Abbott**. This court takes guidance on the issue of the importance of there being evidence of common intention and a detrimental reliance on that common intention.

The defendant's case:

[32] The defendant contends that the claimant has no interest or rights in the property subject to the case at bar. He asserts that the land was gifted to him by his Aunt and the house built out of his sole endeavours and with no contribution from the claimant.

[33] The defendant further claims that at no time did he allow the claimant to believe that she would have an interest in the house or property or that the property belonged to them jointly or as a family.

[34] It has been submitted by counsel for the defendant that there is also no evidence adduced by the claimant which indicates that she acted to her detriment believing that she had an or was acquiring an interest in the house.

[35] It was submitted that if the claimant wanted to establish an interest in the house she would have to show that there was either a verbal agreement or arrangement that allowed her to believe that she had an interest which did not happen and that she acted to her detriment based on that belief which did not happen.

¹² HCVAP2008/0015

[36] Counsel Chante Francis for the defendant submitted that there was no agreement or detrimental behaviour on the part of the claimant and based on these facts the claimant has failed to show that she has or is entitled to any beneficial interest in the home.

[37] During the course of the trial before the court, this court had the opportunity to hear the viva voce evidence of all the witnesses and the court had the opportunity to observe each of the witnesses under cross examination more particularly the claimant and the defendant. This court is not satisfied that the defendant has been entirely forthright in his evidence.

[38] It is to be noted that the defendant was insistent that the claimant did not assist in any way in the preparation and or building of the foundation of the home which occurred in late 2008. His evidence was that she was pregnant and he would not have had her doing any laborious task (my words) in that state. The claimant on the other hand says that she did do her part and that she found out she was pregnant in January of 2009. Well this court notes the date of birth of the child and find that more likely than not the claimant was not pregnant in when the foundation was being prepared and built and more than likely the claimant was being truthful about taking part in that aspect of the project.

[39] This court is cognisant of the requirement to perform a balancing act to do what is right between the parties before the court and to assess each party's contribution as well as the value and weight of contribution to what may be the family home. It is noted that the claimant has quite forthrightly stated that she made no financial contribution to the building of the home but that she made her contribution by taking part in the building and or preparation of the foundation and that she cooked for the workers.

[40] It is the claimant's case that she always was of the impression that the house was to be the family home. It is to be noted that the parties moved into the newly built house together as a couple and lived and cohabited in the house with their children, a second child being born to them whilst they lived in the house. This court accepts that it was a common law relationship and not one of just boyfriend and girlfriend as the defendant sought to convey.

[41] The court accepts that unhappy differences arose between the parties that ultimately resulted in the demise of the relationship and with the claimant moving out of the home.

[42] It is a fact that making a decision as to a share in property upon the demise of a relationship whether marital or common law relationship is no easy task, this is especially so when the property is not jointly owned. The court's task in such circumstances is to establish a possible equitable interest on trust principles or equity assumptions.

[43] This court is guided by the principles as laid down in **Stack -v- Dowden**¹³ where there is sole ownership of the property the onus is on the person claiming a beneficial interest to show that he or she has acquired such.

[44] The claimant in the case at bar has had the burden of proving to this court on the balance of convenience that she was induced to believing that she would have an interest in the home which would have been by her showing the court that there was an express agreement and/or contribution to the acquisition in the property. The claimant must have acted also to her detriment.

[45] After the court has considered the evidence which has been adduced by both parties before the court, it is for the court to decide to whether or not the claimant has demonstrated to the court that she has established a beneficial interest or that the defendant holds the property upon a constructive trust. The court will then calculate the respective shares in the property either by a holistic examination of the whole course of dealing between the parties, taking into consideration the actions of each of the parties and where no clear intention can be found, the court can impute what is fair in the context of the matter.

[46] In the case at bar this court repeats that the defendant has made every effort to deny that the claimant has made any contribution to the building of the house or that she acted to her detriment or that there was any agreement between them that she would have an interest in the house. The court has considered the totality of the evidence adduced and accepts that the claimant did not make any significant or any financial contribution to the building of the house which she has quite frankly stated to the court. There is also no evidence before the court that there were any express representations between the parties. However, this court finds that the claimant must have made some contribution to the decisions made as the defendant says when the house was being built their relationship was good which is even evidence by the fact that she became pregnant during the project.

¹³ Op cit

[47] This court finds it hard to accept the defendants' evidence that he solely chose the paint and the tiles and the design for the kitchen for the house and applying the reasonable man's test this court finds that this was a couple actively involved in building a house which they both moved into together upon its completion and lived in as a family which was expanded with the birth of a second child whilst they lived there that she would not have had some input into the colour of the paint the choice of tiles, the design of the kitchen and this court would go even further and say the choice of the furniture and contents of the home.

[48] Further having lived in the house for a number of years the claimant would have performed the functions of a wife or intimate partner such as cleaning, cooking, taking care of the children and the home which she would have thought was the family home. This is what in law is the evidence of her indirect non-financial contributions in relation to the property.

[49] Non-financial contributions include being a parent and home maker. Home making contributions are just as important as the income earning party or the party that brings in the greater income.

[50] When a common constructive trust is alleged the court will have 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. This court bears in mind the words of Lord Diplock in the oft quoted **Pettitt -v- Pettitt** ¹⁴ in discussing the equitable presumptions of intention and he said that "there are no more than a consensus of judicial opinion disclosed by reported cases as to the most likely inference of fact to be drawn in the absence of any evidence to the contrary" ¹⁵

[51] The relationship between the parties is only one of the number of factors to be considered and given weight to. It is a well-established law but worth repeating that the burden is on the claimant who in the case at bar is not the registered owner of the property to prove that she has a beneficial interest in the property.

[52] Having carefully reviewed all the evidence in this case, this court is inclined to accept the evidence of the claimant over that of the defendant and his witnesses. It was clear to the court that the witnesses who came to give evidence came in support of the defendant but failed to corroborate his evidence and in fact was more helpful to the claimant in pursuit of her claim.

¹⁴ [1970] AC 777

¹⁵ Ibid at page 823 H

[53] It is clear to the court that there was no evidence of an agreement oral or otherwise between the parties that the claimant would have an interest in the property. There is, to this court's mind evidence however, that the claimant acted and placed reliance that she was assisting in the building of their home as a family to her detriment. This court finds that the claimant assisted in the initial construction of the house, that she assisted in cooking for the workers and she actively took part in the choosing of the paint and tiles for the house.

[54] This court finds that applying the reasonable man's test that if at the time of the building of the house the parties had a good relationship with each other it is more likely that the claimant went with the defendant to choose the paint and tiles and not he solely as he sought to say to the court in his evidence. Further, the fact that the claimant and the defendant both moved into their new home together and lived there with their children amounts to indirect evidence which this court can infer from the actions an interest that they shall both have an interest in the property.

[55] In **Grant -v- Edwards**¹⁶ it was held that the agreement between the parties can be found in the claimant's actual contributions. I find that the claimant did in fact assist in the building of the foundation of the house and that she left her own families home to move into the house with the defendant after assisting in whatever little way she could have by cooking for the workers and participating in the choice of the tiles and colour of paint for the house as actions amounting to her contribution to what she understood from the very dynamic of their relationship at the time as her contributing to her home.

[56] In **Stack -v- Dowden**¹⁷ Baroness Hale had this to say *"The search is to ascertain the parties shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it"*¹⁸

[57] In this court's view these matters taken together can constitute which the claimant could not reasonably have been expected to embark on unless she would have had an interest in the property. **Re: Grant -v- Edwards**¹⁹ and **Abott -v- Abott**²⁰.

¹⁶ Op cit

¹⁷ Op cit

¹⁸ Stack -v- Dowden at paragraph 60

¹⁹ Op cit

²⁰ Op cit

[58] The defendant contends that the claimant ought not to be awarded any interest in the property which he owns solely.

[59] It was submitted on behalf of the defendant that the claimant who was her sole witness evidence was “rife with inconsistencies and incredible statements” and contends that when the foundation of the house was being worked on she was pregnant and could not make the contributions she alleges. I do not accept counsel’s submissions in this regard. This court already made its findings of fact in this regard and has rejected the defendant’s evidence. This court accepts that the claimant did do some work on the foundation of the house and was not pregnant as contended by the defendant.

[60] At paragraphs 51 to 54 of Counsel’s submissions on behalf of the defendant it was submitted that the court should make a series of assumptions, none of which are accepted by this court. This court finds as a fact that:

- a. The parties lived in a common law relationship in the house at Belle Vue;
- b. That even though she did not make much of a contribution in terms of finances, there was some contribution made by the claimant, and this court rejects that defendant’s contention that she made no contributions at all.
- c. This court specifically rejects that inference which it is being asked to make that the claimant got herself pregnant and made the sole decision that the house being built by the defendant was to be their family home. This suggestion is pointless at best as the defendant admitted and knows that they were a couple and this is borne out by the fact that they lived together in the house where and during that period the claimant bore two children and they were even joined at some point by the claimant’s third child not of the union.
- d. At paragraph 64 of his submissions the defendant made reference to the fact that he and the claimant slept at a house close to the construction project and that was why one of his witnesses would occasionally see her on the work site in the mornings. In this court’s respectful view if there was no interest or participation on the part of the

claimant she would have not slept close to the project but at her mother's home where she was living prior moving into the new house with the defendant.

[61] This court is cognisant of the fact that because the parties and the children lived in the house does not automatically imply that she had a beneficial interest in the ownership of the house. But this court accepts that she did do a little towards the construction in the preparation of the foundation and the cooking of food for the workers.

[62] In the case at bar the court has considered both sets of submissions filed on behalf of the parties with authorities and the evidence adduced at the trial. Failure by the court to make any mention of any point or argument of either of the parties in no way means that the court has not considered it.

[63] The evidence as accepted by this court having heard from the witnesses and having had the opportunity to observe the demeanor of each witness as they gave evidence, having regard to the entire course of dealings between the parties, this court taking the fact as has been found, in the round this court is of the view that the claimant is entitled to a beneficial interest in the property, however she is most certainly not entitled to the 30% as she prays.

[64] The defendant's posture that the claimant made no contribution in cash, kind or labours to the constructions of the home or took part in any decision about the home is not accepted by this court. Further, this court does not find that there was never any common intention that the home would be the family home with the claimant having some kind of interest is also firmly rejected by this court.

[65] This court has inferred from the conduct of the parties during their relationship even in the face of infidelity as stated by the claimant which she says commenced sometime after and not throughout the relationship which infidelity eventually brought an end to the relationship does not diminish in any substantial way that it is reasonable to conclude that there was a common interest between the parties.

[66] The fact that the claimant and the defendant moved into the new house together and lived and cohabited there as a blended family against the fact that the house was built during the relationship with some contribution, all be it to the court's mind a minimal contribution by the

claimant is in this court's mind sufficient to infer that the home was built as a family home where the claimant was to have a beneficial interest.

[67] Therefore, when deduced objectively from the conduct and applying the principles set out in cited cases of **Stack -v- Dowden**, **Grant -v- Edwards and Abbott -v- Abbott**. This court finds that the house was at all material times intended to be a family home for the claimant, the defendant, and the children of the family.

[68] This court also takes guidance from the Court of Appeal decision in **Louis Dunbar -v- Paul S Webster**²¹ where there was evidence of financial contribution over and above what the claimant in the case at bar would have made the court of appeal reduced that appellant's beneficial interest to 10%, this court taking into consideration all the facts in the case the totality of the circumstances, what the justice of the case and considering the minimal contributions of the claimant, this court is of the view that her beneficial interest would warrant an award to the claimant a 7.5% beneficial interest in the market value of the house subject to the claim at bar.

[69] There shall be no order as to costs.

[70] This court extends its appreciation to counsel for not only the manner in which the trial was conducted but also for their submissions which were of great assistance.

M E Birnie Stephenson
High Court Judge

BY THE COURT

[SEAL]

REGISTRAR

²¹ HCVAP 2009/0069