

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCv 2018/0123

BETWEEN:

Patricia Archer

CLAIMANT

AND

Charmaine Ephraim Personal Representative

For the Estate of Carl Baynes

DEFENDANT

Appearances:

Ms. Safiya Roberts for the Claimant

Mrs. Andrea Smithen-Henry for the Defendant

2021: October 12th

2023: February 20th

JUDGMENT

- [1] **ROBERTSON, J.:** The Claimant initiated these proceedings seeking, among other things, that the Court declare that the property registered as Registration Section: South East, Block: 56 2282A, Parcel 217 which was registered in the name of the Defendant, Carl Baynes, is being held on trust for the Claimant. The Claimant also seeks a declaration that the Claimant is the sole beneficial owner of the property.

Relevant Background

- [2] The parties met sometime in 2006 and entered into a romantic relationship. The parties were married on August 9, 2008, and the parties recognized the dissolution of the marriage to have commenced when the parties separated in or about August 2014. The parties at the time of the marriage were a mature couple, the Claimant 57 years old and the Defendant 70 years old. Both parties had children from previous relationships

- [3] Prior to the marriage the parties, on or about August 1, 2008, at the instance of the Claimant, entered into a pre-nuptial agreement which addressed property division between the parties. The case for the Claimant is that her late husband died on November 14, 2004 and she received proceeds from his insurance policy and the Claimant indicated that she wanted to ensure that the Claimant's children's inheritance from their father was protected and did not form part of the marital assets.
- [4] The case for the Claimant is that the Claimant sought to purchase property in or about late 2008 to early 2009 which the parties discussed and it was expressly agreed that the property would be registered in the name of the Defendant and that the Defendant would hold the property on trust for the Claimant absolutely. It is the position of the Claimant that the Defendant was to hold the property in his own name on behalf of the Claimant until the Claimant obtained citizenship in Antigua and Barbuda at which time the property was to be transferred solely to the Claimant. The Defendant was a citizen of Antigua and Barbuda.
- [5] The Claimant contends that in reliance on this expressed intention the Claimant solely financed the acquisition of the land, and the Claimant later built a three-bedroom house on the property.
- [6] The Claimant pleads that she commenced the process to become a citizen of Antigua and Barbuda, but the process was never completed as the Defendant did not complete a process which was required to be completed by the Defendant. The Claimant, however, indicated that the Defendant always acknowledged that the Claimant was the beneficial owner of the property.
- [7] The Defendant contends that in or about 2008 the Claimant and the Defendant were driving in Falmouth and English Harbour and the Claimant indicated that she wanted to erect a mansion for the Defendant. The Defendant contended that the purchase of the property in April 2009 and placing the property in the name of the Defendant were actions in keeping with the expression by the Claimant that she wanted to gift a house to the Defendant. The Defendant contends that there was never a conversation between the parties that the Claimant would hold the beneficial interest in the property or that the property would be held by the Defendant on trust for the Claimant. The Defendant indicates that it was always a joint understanding that the Claimant was purchasing the property as a gift for the Defendant.
- [8] The Defendant denied that he made a will bequeathing the property to the Claimant and if the Claimant were to predecease the Defendant that the property was to be willed to the children of the Claimant. The Defendant contends that this was a suggestion made by the Claimant but one which was rejected by the Defendant. The Defendant maintains that the house was a gift to the Defendant and that Claimant wishes to revoke the gift because their marriage has broken down. The Defendant's position is that the Claimant wanted to "renege on our clear understanding and agreement that she would have no right or interest in the Property".
- [9] The Defendant also indicated that as per the Pre-Nuptial Agreement it was the intention that in the event of the breakdown or dissolution of the marriage the sole ownership of the property held in each individual's name would remain in the name of that individual.

[10] The pre-nuptial agreement was executed to provide arrangements in the event of the dissolution of the relationship, or the death of either party. Clause 4 of the agreement provided that:

“4. PROPERTY DIVISION

The parties have disclosed to each other all property acquired to date. All the said property is property acquired before the marriage. In the event of a breakdown of the marriage the parties agree that with respect to any property acquired before the marriage:

- (a) Rights of ownership govern the division of property between them, and there will be no division of property except according to ownership;
- (b) Neither of them will be entitled to property rights in the said property arising out of their marital relationship;
- (c) Neither of them will be entitled to a division of property owned by the other;
- (d) Neither of them will have any monetary claim against the other measured by reference to the value of any property referred to above owned by the other.

For greater clarity of the foregoing, the property of Patricia Archer attached hereto on Schedule A shall not form part of her net family property value. In addition, any such share, unit or other property in Schedule A that is reinvested in another investment shall not be included in the net family property value.

Baynes agrees that in the event of a breakdown of the contemplated marriage between the parties he will not assert any claim against any of the said assets pursuant to the Family Law Act or any other legislation.

In addition and notwithstanding the foregoing, the parties agree that the equity as of the date of the marriage in the property known as ...Ontario¹ shall not form part of Archer's net family property value. Furthermore any increase in value from the date of the marriage will also not form part of the said net family property value. If Archer sells the said property and uses the liquidated equity to purchase another family residence, the equity as of the date of the marriage and any increase thereof in any subsequent family residence shall not form part of her net family property value.

The property of Carl Baynes set out in Schedule B attached hereto shall not form part of his net family property value. In addition, any such share unit or other property in schedule B that is reinvested in another investment shall not be included in Baynes' net family property value.

Archer agrees that in the event of a breakdown of the contemplated marriage between the parties she will not assert any claim against any of the said assets pursuant to the Family Law Act or any other legislation.”

¹ Address omitted.

[11] Carl Baynes departed this life prior to the trial in this matter however, the witness statement filed was permitted to be entered into evidence and this Court is tasked with attributing the requisite weight to the contents therein.

Issue.

[12] The primary issue before the Court for determination is whether Carl Baynes held the property in question for the sole interest for the Claimant or whether the property, was as Mr. Baynes contends gifted to him by the Claimant.

The Law and the Finding of the Court.

[13] At the time when the parties met the Claimant had two daughters and was widowed. The Defendant had children. The Claimant was a citizen of Canada and the United States of America, and the Defendant was a citizen of Canada and Antigua and Barbuda.

[14] The parties, at the prodding of the Claimant, entered into a prenuptial agreement which governed the division of the property in the event that the marriage was dissolved. That agreement, among other things, identified in schedule A property which was owned by the Claimant at the time of the marriage. The property included, a property in Newmarket, RRSP LIRA (federal) savings plan administered by Assante Capital Management and all bank accounts in Canada and wheresoever situated. These assets were not to form part of the net family property value. Additionally, any share, unit or other property in schedule A that was reinvested in another investment shall not be included in the Claimant's net family property value. The Agreement indicates further that in the event of a breakdown of the contemplated marriage between the parties the parties would not assert any claim against any of the assets pursuant to Family Law Act, of the Laws of the Province of Ontario or any other legislation.

[15] The parties visited various islands in the Caribbean and having reviewed options of other islands decided to build a house in Antigua. It is the evidence of the Claimant that "During our relationship, the Defendant and I spoke about having similar desires to live in the Caribbean ..." In the search for property in the Caribbean both parties engaged in the exercise.

[16] Although the Defendant holds that the property was purchased as a gift for the Defendant it is accepted that the Defendant spent time in Canada with the Claimant and that the parties spent time in Antigua. The evidence of the Claimant is that between August 2009 to May 2012 the Defendant lived with the Claimant in Canada and the Claimant frequently visited Antigua. The Claimant's evidence is that she intermittently occupied the property from about May 2013 to July 2013 and between March 2014 and April 2014. The Claimant states further that the house in Antigua was intended to be a vacation home. The Defendant indicated, "Our marriage and love continued to blossom. Life was peachy. We would spend a few months per year at the property mainly during the colder months in Canada. Things worked out well because Patricia had friends here that she knew from growing up in Guyana who had migrated to Antigua. She therefore had a social network in Antigua and friends and family from overseas would visit us and spend time with us at the property."

[17] The evidence supports that the parties shared a home in Canada and intended to travel to and stay in Antigua to spend time in the house in Antigua.

[18] The Court of Appeal in **Teckla Edwards v Dr. Alvin G. Edwards**² noted that “where property is registered in the name of only one of the parties in a cohabiting couple, there is no presumption of joint beneficial ownership. In determining what share each party is entitled to, the court must consider the whole course of dealings between them in relation to the property and determine what is fair. In doing so it must be noted that financial contribution is only one of the relevant factors”. The Claimant is asserting the Claimant holds a beneficial interest over the entire property.

[19] It is clear that the property was acquired in a domestic arrangement and not as an investment property. In circumstances where the Court is inquiring into the equitable ownership of family houses Courts address the matter with the application of the principles of constructive trust³. A constructive trust arises when, although there is no express trust affecting a specific property, equity considers that the legal owner should be treated as a trustee of an interest for another⁴.

[20] In considering the matter of the existence of constructive trust the Court is required to consider whether there was a common intention that the Claimant hold a beneficial interest in the property, and this is determined by looking at the whole course of dealings between the parties.

[21] The evidence in this case is that the parties met in July 2006 and were married in August 2008. As evidenced in the pre-nuptial agreement the Claimant specifically, and the Defendant generally intended to keep the assets held by the respective parties prior to the marriage separate from the marital assets. The evidence before the Court is that during the marriage the parties did not hold joint accounts save for a joint account which was held to facilitate the construction of the house which is the subject of these proceedings... It was the intention for the parties to hold their assets separately.

[22] Regarding the purchase of the property there is no dispute that the Claimant paid the purchase price for the property and paid the construction costs. The Claimant contends that the funds for purchase and construction were derived from her personal assets and partly from insurance monies received from her late husband's death and funds from investments. Specifically, the Claimant received funds from the insurance from a previous relationship which amounted to US\$459,871.82 which the Claimant contends contributed towards the purchase of the land and the building of the house. There is also evidence that funds which the Claimant held in a RBTT bank in Tobago were transferred to an account in Antigua.

² [2015] ECSCJ No. 253 at [45].

³ *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432, [2007] 2 All ER 929; *Jones v Kernott* [2011] UKSC 53, [2012] 1 AC 776, [2012] 1 All ER 1265.

⁴ Halsbury's Laws of England; Equitable Jurisdiction (Volume 47 (2021)); 7. Equitable Relief in Cases of Fiduciary Relationship; (1) Trustees and Other Persons in Fiduciary Positions; 230. Constructive trusts.

[23] The Claimant contends that the reason that the property was not placed into the Claimant's name is that the Claimant was a non-citizen and there would have been a requirement to obtain a non-citizen's land holding license the costs of which was prohibitive. The Claimant indicated that it was the decision of the parties that the property would be placed in the name of the Defendant and when the Claimant attained citizenship the property would be transferred into the name of the Claimant. The Claimant never obtained citizenship and blames the inaction of the Defendant for not having obtained same.

[24] The Defendant contends that at the time of the purchase the parties were in the euphoric stage of their romance and the Claimant was gifting the property to the Claimant.

[25] It is difficult for this Court to accept that the Claimant who appeared to be sufficiently conscientious about preserving her resources for the benefit of her children would expend EC\$1,091,885.00 for a house specifically for the Defendant. The Court has formed this opinion on account of the fact that seven days prior to the marriage the Claimant raised the matter of the parties entering into a prenuptial agreement. This suggests that despite the contemplation of marriage she continued to be interested in ensuring that her assets did not become marital assets.

[26] Additionally, the Claimant continued to consider the preservation of her resources for the benefit of her children, and this can also be gleaned from the admitted conversation which the Claimant had with the Defendant regarding the Defendant's testamentary disposition regarding the subject property in or about 2013. The evidence of the Claimant is that she was of the view that the Defendant did, in a testamentary disposition, bequeath the property to the Claimant upon his death and if the Claimant predeceased the Defendant transferred the property to the Claimant's children. The Defendant in his affidavit admitted that such a conversation occurred but indicated that he did not agree with the suggestion and took no steps in this regard. Further, the Court also notes the Claimant's evidence of the attempts made by the Claimant to attain citizenship.

[27] This Court has formed the view on a balance of probabilities that the Claimant did not intend to gift the property to the Defendant. This finding is evident despite Counsel for the Defendant's reference to a correspondence in which the Defendant stated "This has nothing to do with wanting a divorce that is your issue. I did not ask you to build me any house⁵". It is noted that the words in the correspondence arose after the marriage broke down and suggest that the Defendant was expressing frustration about the financial position which would have likely arisen because the parties were separated and were required to expend funds on the house in Antigua.

[28] The evidence of both parties is that it was their intention that the house would be a home for the parties and that the parties would spend certain months of the year at the home in Antigua. The Claimant's evidence speaks specifically to a vacation home and the Defendant envisaged the Claimant spending long periods in Antigua. The Defendant's affidavit indicates that "... I was supportive of her receiving citizenship. This was not only because she was my wife but also, as I

⁵ Letter from the Defendant dated June 6, 2015.

explained to her, it would avoid the six-month limitations on her stay every time we traveled to Antigua”⁶.

[29] It is also relevant to consider how the parties viewed the property when the marriage broke down in August 2014. In a correspondence dated August 28, 2014, the Claimant indicates that “As regards the house in Antigua, I would like to receive my portion of the value as soon as possible.” Additionally, in an emailed correspondence the Claimant indicated “About the finances, I hope I was clear when I said to you that I would fulfil my obligations to pay the insurance until February 2015 and that you should sell the house since I have no intention of returning to Antigua”. In correspondence dated September 15, 2015, the Claimant indicated that “Kindly do not try to contact me in the future about money, unless you consider renting or selling the property, then you need to keep in mind that my investment in the property has to be honored”.

[30] Additionally, in an emailed correspondence January 31, 2019, the Claimant communicated with the Defendant indicating “In light of the information I received from you concerning the property taxes, it is obvious that the cost of maintaining the property is overwhelming. I agree that this is not what we wanted when we started, but unfortunately it has come to this, and as it stands, we are in peril of losing the investment. The house is not insured, the property taxes are in arrears, and maintenance cannot be carried out against termites etc., and there are no resources/money to maintain, much less restore the property in the event of damage or loss of any kind. Holding on to a property we cannot afford is not a wise choice, it puts us close to being left without the property and in the meantime depriving both of us of much needed money. We have to give ourselves a chance to sell, and we will only know if it can sell by putting it on the market. ...”. This communication is indicative of the Claimant’s acceptance that the sale of the property could only be done by the Defendant.

[31] Collectively, the communication suggests that the Claimant accepted that the Defendant also had an interest in the property.

[32] In considering the proportion of interest the Court again looks at the entire course of dealings between the parties. It is clear from the evidence that during the marriage the Claimant paid the entire purchase price for the property and the cost of construction. The marriage lasted six years. The insurance for the property was shared from on or about June 2014 to October 2014 otherwise the Defendant’s contributions for upkeep and utilities seem to arise only after the parties separated and while the Defendant resided at the property. This Court has also considered that a portion of the six years that the parties were married the property would have been in the process of acquisition and under constructed.

[33] This Court has determined that the Defendant holds the property on trust for the Claimant. The Claimant holds a beneficial interest of 90% and the Defendant holds a beneficial interest of 10% in the property.

⁶ See Affidavit of the Defendant paragraph 11.

[34] As a consequence of the foregoing this Court orders that:

- (1) The Defendant holds the property identified as Registration Section: South East Block: 56 2282A Parcel 217 on trust for the Claimant in shares of Claimant: 90% and Defendant: 10%.
- (2) The property to be appraised and sold and the net proceedings for the sale be divided in accordance with the shares herein determined.

Marissa Robertson

High Court Judge

By the Court

Registrar