

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

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. ANUHCV 2017/0291

BETWEEN:

MAUREEN SCHOUTEN

Claimant

and

GERALD SCHOUTEN

Defendant

Appearances:

R. Leonard Moore, Counsel for the Claimant

Laurie Freeland-Roberts, Counsel for the Defendant

2022: June 23rd
Dec 6th

JUDGMENT

Overview

- [1] **ROBERTSON, J.:** The Claimant initiated these proceedings seeking a declaration that the Claimant is entitled to an interest in the property more particularly described in the Land Register as Registration Section: Jennings Block 53 1687A Parcel 91. The Claimant contends that the Defendant held the property in trust for himself and the Claimant as tenants in common in equal or some other proportion of shares. The Claimant also sought the return of a bag containing legal documents belonging to the Claimant, damages (special, general, exemplary, and aggravated). The Claimant further seeks an order that the Claimant is entitled to 50% share of the chattel house and a motor vehicle, (Toyota RAV 4) registration number A29741. The Defendant disputes that the Claimant has an interest in Parcel 91 as the Defendant pleads that there was never an intention that the Parties would continue to reside on Parcel 91.
- [2] In this matter the Claimant gave evidence and Gerrick Schouten and Gerald Schouten (junior) provided evidence in support of the Claimant's case. The defendant, Gerald Schouten, gave evidence and sought that the witness statement of Allison Warner be admitted into evidence in support of the Defendant's case.

An Overview

- [3] The Parties were married in June 1989 and separated on or about April 2015. The Defendant dates their separation to July 2016. As a young couple and prior to the marriage the Parties lived in a common law relationship at New Winthropes. When the Parties began cohabitation neither party possessed any appreciable assets. After residing in New Winthropes as a couple for a period of approximately seven months the Parties moved to Hatton, Greenbay and another rented accommodation. In 1996 Allison Warner, the guardian or adopted mother¹ of the Defendant permitted the Parties to enter and occupy Parcel 91. At the time of occupation Parcel 91 was owned by Allison Warner. The Defendant was later given legal title to Parcel 91².
- [4] The Court is required to determine:
1. Whether the Defendant holds Parcel 91 on trust for the Claimant and the Defendant.
 2. If held in trust, what are the beneficial interests held by the Parties.
 3. Whether the Claimant is entitled to damages and, if the Claimant is entitled to damages what ought to be the measure of such damages.
- [5] The matter of the Parties' interests in the chattel house and the vehicle (Rav-4) have generally been settled by the Parties.

The Law, Analysis and Findings

- [6] It is common ground that the finding of whether a party holds a beneficial interest in property held in the name of another is determined through the application of the principles of the law of trust, constructive trust. This has long been settled in the often-quoted case of **Abbott v Abbott**³ and reaffirmed by our Court of Appeal in the case of **Teckla Edwards v Dr. Alvin G. Edwards**⁴. In that case, our Court of Appeal reminds 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 dealing 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".
- [7] Accordingly, the Claimant is tasked with establishing that a constructive trust was established and that she has a beneficial interest in the property in question. In determining whether such interest exists the Court looks at the whole course of dealing between the Parties as it relates to the property and considers whether a common intention, actual, inferred or imputed, existed and whether the Claimant in reliance of that common intention acted to her detriment so that it would be unjust for a Court of equity not to be moved. It is noted that where shared intentions have been found it would

¹ There is no evidence of a formal adoption.

² See Land Register endorsement 3/12/04.

³ Privy Council Appeal No. 142 of 2005.

⁴ ANUHCVP2012/0040.

generally be very difficult to find a circumstance when a claimant would not have acted to his/her detriment in reliance of that shared intention. Where there is a determination that the Defendant held the property for the benefit of the Claimant and the Defendant the Court will further consider the whole course of dealing and apportion the relevant equitable interest.

- [8] In the circumstances of this case the Defendant's guardian owned the parcel of land in question. The Parties were a young couple who began cohabitation in 1988 and were married in 1989. The Parties welcomed their first child in December 1989, their second child in 1993 and third child in 1994. During the period 1989 to 1997 the Parties rented various accommodations with their young children. Sometime on or around 1996/1997 the former guardian of the Defendant gave permission to the Defendant and his family to occupy Parcel 91. Parcel 91 contained an old building which had an electrical meter. The evidence of the Claimant is that the chattel house was not habitable and in order for the Parties to occupy the chattel house the Parties had to renovate the structure. The Claimant also indicated that the Defendant's guardian advised them, and they accepted, to repair the uninhabitable building which was on the property and use the existing electrical meter which related to that building. In so doing the Parties would not have to use their limited resources to apply for a separate meter connection to a new building.
- [9] The evidence of the Defendant is that in order to assist the Defendant to save money usually used for rent the Defendant approached his former guardian to use the wooden chattel house on Parcel 91. The evidence of the Defendant is that if the Parties were able to save the money normally spent on rental accommodation the Parties would have been able to build their own home on a parcel of land which they owned. The land upon which the property would have been built was a parcel of land which was subsequently acquired in Bendals. The property in Bendals was acquired in 2000.
- [10] The evidence of the Claimant is that in 1998 she commenced working with the Government and she began trying to secure a piece of land to purchase so that the family could begin acquiring assets. The Claimant eventually went to the Central Housing and Planning Authority (CHAPA). The Claimant indicated that despite the Defendant's negative representations about her approach to obtain the property the Claimant persisted, and a parcel of land (Parcel 337) was allocated the Claimant. The Claimant indicated that she paid a down payment on the parcel and made arrangements for the payments for the property to be made from her salary. The Claimant indicated that she advised that the property was to be owned by the Parties and therefore the land certificate was issued in the names of the Parties. The Claimant further indicated that the payment for the property was taken from her salary although the receipts were in the names of both Parties.
- [11] The evidence of the Defendant is that it was always the intention of the Parties that Parcel 337 would be the property upon which the Parties were to build the matrimonial home. The Defendant contended that the Defendant was aware of the availability of a parcel of land from CHAPA which would be the intended location for the matrimonial home. This was known around the time when the Parties began the occupation of Parcel 91.

- [12] This Court does not accept that Parcel 337 or some other property was intended to be the matrimonial home. The Defendant indicated that this intention was formed prior to the Parties' occupation of Parcel 91 however, the Parties had no agreement to purchase Parcel 337 until 10th June, 2000⁵. Additionally, the Defendant admitted during cross-examination that the document dated 24th September, 2004 with the projected estimate for construction on Parcel 337 was not obtained for the purpose of construction on the Parcel 337.

Parcel 91

- [13] It is clear from the evidence that early in the relationship the Parties were of limited financial means and the Parties would have favoured an arrangement which allowed the Parties to occupy an accommodation for which the payment of rent was not required. The occupation of the Parcel 91 offered such a solution. It is clear from the evidence that the building which was on the premises was in need of repair generally and would have needed to be repaired for the specific occupation of the Parties. Although the Defendant indicated that his guardian had some material on the premises to effect repairs for the purpose of renting the chattel house it is clear that the Parties had to source additional materials. Additionally, it is noted that it is unlikely that his guardian would have expended additional funds on repairs once the decision was taken that the house was not to be rented for profit but was to be used for the occupation of the Parties.
- [14] Once the Parties were in occupation of the chattel house, the Parties agreed that it was necessary for the chattel house to be renovated. The renovation required that there be the addition of two bedrooms and a bathroom. In this way the house would better accommodate the Parties and their three children.
- [15] The evidence of the Claimant is that the 'adopted' mother of the Defendant held out that Parcel 91 was to be transferred to the Defendant and that the Defendant held out to the Claimant and to the children of the family that Parcel 91 belonged to the Parties and the children of the Parties. In support of this position the Claimant indicated that "Ms. Warner would tell me that the land we were living on was meant to be Mr. Schouten's land and be transferred to him. Mr. Schouten would then consistently and repeatedly assure me that, as the land was to be transferred to him, that as his wife, the land and the house would be ours jointly. Many times, he would even say that he himself does not want the property and it was for me and the kids". This statement was supported by the evidence of their son Gerrick Schouten who said that "From as early as I can remember, I recall hearing my dad expressing some variation of the phrase that the land that the family home was on was ours. By "ours" I understood him to mean my siblings and I (sic.). I envisioned that the land was separated into four (4) equal parts, one for each of my siblings and I (sic.). I used to dream of turning my part into a farm or field that I could play in, or building a house there and renting it". The evidence of another child of the couple, Gerald Schouten (Junior) is, "I was the one who was solely responsible for mowing the entire lawn from the top of the road to where the fruit trees were planted. It was hard

⁵ See: Agreement for Sale dated 10th January 2000 and the Receipt for Down payment. Receipt Number 34107.

work to do this as the land was very large, 0.8 acres, and it was also uneven, so it took great effort to push the lawn mower over the entire surface area of the land. On many occasions, I endured the difficult task because my father would say that the land also belongs to us and that we must keep it in pristine condition”.

- [16] It is also noted that the Parties were involved in a physical confrontation regarding the boundaries of the property which later resulted in civil claim being issued by the Parties. The Claimant’s desire to assert seeming proprietary interest is likely to have arisen from an understanding that she had a proprietary interest in the Parcel 91.
- [17] Counsel for the Defendant stresses that although the Parties lived on Parcel 91 from 1996/7 to 2015 there was no substantial development done to the chattel house. Specifically, Counsel noted that after the house was repaired and the Parties added two bedrooms and an additional bathroom no steps were taken to erect a permanent fixture on the Parcel 91. Counsel for the Defendant noted that this was indicative of the fact that the Parties continued to treat Parcel 91 as being a temporary location with the ultimate intention of building on Parcel 337.
- [18] On this matter this Court makes the following observations. Firstly, the valuation report dated 2nd July, 2017 indicated that the chattel house was in “a fairly average” state of repairs, and it was valued at EC\$73,000.00. The land was valued at EC\$213,000.00. The valuation describes the property as a residence of approximately 861 square feet, containing four bedrooms, two bathrooms, kitchen, living/dining area and a veranda. The house appears to have been reasonably comfortable for the purposes of the Parties. Secondly, the fact that the home remained in the form of a chattel house is not necessarily indicative of how the Parties viewed ownership of the property as there may be a variety of reasons (including the availability of financial resources) that the home remained in the form of chattel house.
- [19] The cumulative effect of the evidence of the Claimant, the two children and the fact that one of the children was permitted to restore or build a house on the Parcel 91 leads the Court to conclude that there was a common intention that the Parcel 91 was intended to be matrimonial property of the Parties and the Parties would share an interest in the property.

The Apportionment of Interests

- [20] The evidence of the Claimant is that during the period of cohabitation the Claimant was at times a homemaker and at other times employed outside of the home. The Claimant indicated that around the period 1994 to 1998 the Claimant did not work full-time but “continued to earn income from the sale of house plants and crochet pieces”. The Claimant would also make bread and other commodities to reduce the household’s expenses. The children of the Parties who provided evidence supported the Claimant’s position that she was generally the caregiver to the family.
- [21] On or about 1998 the Claimant gained employment with the Government of Antigua and Barbuda at the Ministry of Finance and her evidence is that at a point in time she was working two jobs until

2004 when she was transferred fully to the Board of Education. The evidence of the Claimant is that she assisted financially or assisted by securing material for the work to be done on the house, and that she also assisted with the initial repair work done on the house, the expansion of the house, the beautification of the property and the maintenance of the property.

[22] The Defendant admitted that the Parties supported the household as a family unit.

[23] This Court accepts the evidence of the Claimant that she did assist in the manner indicated and that this assistance arose not simply as an occupier of the premises but out of expectation that she held a beneficial interest in the Parcel 91.

[24] On the matter of the acquisition of beneficial interest in property arising from non-financial contributions the Court notes the learning of Saunders J. in the case of **Stonish v Stonish**⁶ in which it was stated that:

“In assessing the respective contribution of husband and wife, there was a time when one regarded the fruits of the money-earner to be more valuable, more important than the childbearing and homemaking responsibilities of a wife and mother. If the man was reasonably successful at his job and the family fortunes were vastly improved, his contribution was almost automatically treated as being greater than that of his wife, who remained at home. Ironically, if the man’s business failed, whether through bad luck or ineptitude, the wife invariably shared equally the couple’s hard times. The court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little to a contribution that is less measurable but equally important to the family structure. In the vast majority of cases where these two types of contributions are in issue- that of a home maker and that of an income earner; it is the wife who has stayed at home while the husband has performed the role of breadwinner. There is therefore an element of discrimination in degrading the woman’s’ role in the home.”

[25] In the circumstances of this case the parcel of land was gifted to the Defendant while the Parties were in occupation of the premises and after the Parties expanded the house. No funds were expended on the acquisition of Parcel 91, but funds would have been expended on chattel house and other works done on the property. Saunders JA. in the **Stonish** case noted that “Spouses may choose to perform a different role in a marriage. If the husband’s skill, initiative, hard work and drive yield handsome financial rewards, it is entirely unfair to regard those rewards as being any greater in value than those of the wife who might have employed equal skill, initiative, and dedication at home bringing up children and keeping a stable household. In such a case, I see no reason why the assets acquired during the marriage ought not to be equally divided... [E]ach in their different sphere contributed equally to the family, and as a general guide, equally in the distribution of the matrimonial assets should be departed from only if, and to the extent, that is good reason for it.”

⁶ (2003) BVI Civil Appeal No. 17 of 2002.

- [26] In the circumstances of this case there is no good reason to depart from an equal distribution of the matrimonial assets. This Court does not accept that when the Claimant travelled to Tortola that she abandoned the home. This Court accepts the evidence that the Claimant travelled to Tortola to secure employment which would place the Claimant in a better financial position to assist the children of the marriage in their education endeavors abroad and to support the household. The evidence of the Claimant is: "I had exhausted all other means of getting finances to meet family expenses. In addition to this, I also conceptualized that resigning from my post with the Board of Education, where I had worked for approximately thirteen (13) years, would allow me access to other finances".
- [27] This Court also accepts the evidence of the Claimant regarding her continued commitment to the household after the Claimant took up employment in Tortola. The evidence of the Claimant, which was supported by the evidence of a child of the marriage, is that the Claimant sent boxes of items for the children while she was in Tortola.

The Witness Statement of Allison Warner

- [28] Allison Warner departed this life prior to the trial of this matter⁷. Counsel for the Defendant filed an application on the day of the trial seeking to have the witness statement of Allison Warner admitted into evidence. Counsel raised several reasons for the late filing of the application. The application was resisted by Counsel for the Claimant. This Court has determined that the witness statement of Allison Warner would not be permitted to be read into evidence since in accordance with CPR 29.8(2) the application was required to have been filed "not less than 28 days before the trial". Additionally, it was noted that in the affidavit in support of the application the Defendant was cautioned by his Counsel that the said Counsel was in the process of dealing with a new project and that given the demands of the new project it would be wise for the Defendant to seek new counsel. The Defendant opted to remain with Counsel despite being cautioned by Counsel and therefore must be taken to have accepted any eventuality which would have arisen as a consequence of exercising that option.
- [29] It is further noted that the notice of the date of the trial was received by the Parties some five months before the scheduled date for hearing. It would have been reasonable for the Defendant or Counsel, upon receipt of the notice of the trial to ready themselves for trial by filing the appropriate application to have the witness statement of Allison Warner read into evidence.

Damages

- [30] The Claimant has claimed special damages, general damages, aggravated damages and exemplary damages.

⁷ Allison Warner departed this life on 3rd March, 2021.

Rental

- [31] The Claimant contends that when the Claimant returned to Antigua from the employment period in Tortola in October 2017, she found that the locks of the doors to the matrimonial home to have been changed and that she was unable to gain entry to the premises. As a result of this the Claimant sought lodging from family and friends and in January 2018 the Claimant secured rented accommodation at the monthly sum of EC\$1,000.00. The evidence of the Defendant was that the locks were changed because the locks were damaged and needed to be changed. The Defendant did admit that the Claimant was not given a copy of the new keys. Thus, the Claimant would not have had access to the matrimonial home.
- [32] It is common ground that the principles relating to special damages is that such must be specifically pleaded and specially proved. The Claimant has pleaded special damages from "Rental accommodation \$1,000.00 monthly for fifteen (15) months (and continuing) = \$15,000.00 copies of rental receipts are attached and marked MS-4". The list of receipts was received into evidence. Nine receipts reflect the payment of EC\$1,000.00 for rental accommodation by the Claimant to a landlord. The other receipts do not identify the subject matter for which the payments have been made but the signatures appear to be consistent with other receipts. It is not disputed that the Claimant was out of the matrimonial home for the stated period.

Damages for Items

- [33] The Claimant also seeks damages as compensation for personal items which the Claimant contends belonged to her but were retained and were destroyed when the items were placed in the open yard and were left unprotected against the weather and other elements. The evidence of the Claimant is that the Defendant "continued to deny me the opportunity to retrieve my personal and other belongings" from the house. The Claimant also stated that the Defendant "refused to give the children anything either. I along with the children, had to begin to amass basic appliances, furniture and other necessities and conveniences in order to have some semblance of functional life". The Claimant's further evidence is that she visited the matrimonial home with the police officers and saw a large quantity of items from the matrimonial home in the yard in a pile. The evidence of the Claimant is that the items were water soaked. The Claimant produced pictures of items which appeared to have been discarded.
- [34] The Defendant's account is that the items were placed in the yard because he was having "health issues" and "something within the home was causing the issues". The Defendant indicated that none of the items disposed were personal items belonging to the Claimant. The items disposed included one and a half beds, old rugs and carpets and old pillows all of which were stained and/or had a "fowl" odor and had to be removed.
- [35] The evidence clearly indicates that the items were discarded. It appears that these items were part of the matrimonial assets, and the items were obviously used items. There is little evidence on how

old the items were at the time they were disposed. The Claimant alleges that the discarded items were valued at approximately EC\$10,050.00 but has not provided evidence in support of this sum. In this regard while the Claimant has proven the loss, she has not been able to quantify the damages and would only be awarded nominal damages.

- [36] Nominal damages would be awarded to compensate the Claimant for her loss. Nominal damages may, as noted by the authors in *McGregor on Damages*⁸, "...be awarded where the fact of a loss is shown but the necessary evidence as to amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case the problem is simply one of proof, not of absence of loss, but of absence of evidence of the amount of loss."
- [37] Nominal damages are awarded in the sum of EC\$1,000.00.

Damages for Exclusion from the Matrimonial Home

- [38] The Counsel for the Claimant in his submissions contended that the Claimant is entitled to occupational rent, she having been excluded from the matrimonial home.
- [39] The matter of occupational rent was considered in the case of **Re Pavlou (A bankrupt)**⁹. In **Re Pavlou (A bankrupt)** Millet J. stated: "First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the co-owner in occupation has ousted the other, but in any other case in which it is necessary to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forcible exclusion therefore is far from conclusive. Secondly, where it is matrimonial home and the marriage has broken down, the party who leaves the property will, in most cases, be regarded as excluded from the family home, so that an occupation rent should be paid by the co-owner who remains. But that is not a rule of law; that is merely a statement of the prima facie conclusions to be drawn from the facts. The true position is that if a tenant-in-common leaves the property voluntarily but would be welcome back and would be in a position to enjoy his or her right to occupy, it would normally not be fair or equitable to the remaining tenant-in-common to charge him or her with an occupation rent which he or she never expected to pay."
- [40] It is noted that the Claimant has not specifically pleaded this head of damages and specific evidence has not been lead on this matter, thus, this will not be considered by the Court.

⁸ 13th Edition at paragraph 295.

⁹ [1993] 1 WLR 1046.

Aggravated and Exemplary Damages

- [41] The Claimant has sought aggravated and exemplary damages. The categories of exemplary damages are well known and have been outlined in the often-quoted case of **Rookes v Barnard**¹⁰. Counsel for the Claimant referred the Court to **Valentine v Rampersad**¹¹, a case from the Court of Appeal in Trinidad and Tobago, where it was noted that the dictum of Lord Devlin in the case of **Rookes v Barnard** does not exclude the possibility of exemplary damages being visited upon corporations or individuals engaged in oppressive actions. Counsel indicates that the case before this Court is one in which the Court ought to make an award in exemplary damages.
- [42] The Counsel for the Claimant also asked the Court to consider awarding aggravated damages. On the matter of aggravated damages “the court may take into account the defendant’s motives, conduct and manner of committing the tort, and where these have aggravated the plaintiff’s damages by injuring his proper feelings of dignity and pride, aggravated damages may be awarded. The defendant may have acted with malevolence or spite or behaved in a high-handed, malicious, insulting or aggressive manner¹²”
- [43] The question for this Court’s determination is whether the actions of the Defendant were so oppressive or arbitrary in nature that an award in exemplary damages ought to be visited upon the Defendant. Additionally, whether there should be an uplift in an award to permit aggravated damages arising from the conduct of the Defendant and the injured feelings of the Claimant.
- [44] In this matter general damages have not been awarded. Additionally, this Court is of the view that the Claimant has not met the threshold for awards to be considered under these heads of damages. Further, the Claimant has not specifically proven how her feelings of dignity and pride were particularly hurt by the actions of the Defendant.
- [45] As a consequence of the foregoing this Court makes the orders and declarations indicated hereunder. Courts order:-
1. It is declared that the property recorded and registered in Land Registry Registration Section: Jennings Block No. 53 1687A Parcel 91 is held by the Defendant on trust for the Defendant and the Claimant in equal shares as tenants in common.
 2. It is ordered that the Defendant is to pay the Claimant for her share of the said land and in default of payment to execute and deliver to the Claimant a duly executed transfer of the property into the names of the Claimant and the Defendant as tenants in common in equal shares. The costs of the execution of the transfer to be shared equally.
 3. It is ordered that the Claimant holds a 50% share in the chattel house located on Parcel 91.
 4. It is ordered that the Claimant holds a 50% interest in the Rav-4 motor vehicle Registration A29741.

¹⁰ (1964) 2 WLR 269.

¹¹ (1970) 17 WIR 12.

¹² Colin Isaac v Registrar of High Court et al.

5. Special damages are awarded in the sum of EC\$15,000.00.
6. Nominal damages are awarded in the sum of EC\$1,000.00.
7. The Claimant is entitled to any legal documents belonging to the Claimant which continue to be in the possession of the Defendant.
8. Prescribed costs are payable to the Claimant by the Defendant.
9. Interest on special damages is payable from the service of the claim to present at 2.5%.

Justice Marissa Robertson
High Court Judge

By The Court

Registrar