IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

GRENADA

CLAIM NO. GDAHCV2016/0351

IN THE MATTER OF THE PROPERTY SITUATE AT GOLF COURSE IN THE PARISH OF SAINT GEORGE IN THE STATE OF GRENADA CONTAINING BY ADMEASUREMENT 5,343 SQUARE FEET TOGETHER WITH DWELLING HOUSE THEREON

AND

IN THE MATTER OF THE PARTITION ACT CHAPTER 225 SECTIONS 4 AND 8 THEREOF OF THE 2010 CONTINUOUS EDITION REVEISED LAWS OF GRENADA

AND

IN THE MATTER OF AN APPLICATION BY DEANNE ISAAC FOR AN ORDER FOR THE PARTITION AND OR SALE OF THE SAID PROPERTY SITUATE AT GOLF COURSE IN THE PARISH OF SAINT GEORGE IN THE STATE OF GRENADA

BETWEEN:

DEANNE ISAAC

Applicant

and

HENRY SIMON

Respondent

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow High Court Judge

Appearances:

Ms. Lawrene Griffith for the Applicant
Ms. Alicia Lawrence for the Respondent

2022: September 22; 29; (Further hearing)
November 25; (Closing submissions)
December 13.

JUDGMENT

[1] **GLASGOW, J.:** The applicant (Ms. Isaac) requests an order that she is entitled to a fifty percent beneficial interest in property with dwelling house thereon situate at Golf Course in the parish of Saint George which she jointly owns with the respondent (Mr. Simon).

Background

[2] In or about the year 1983, the parties became involved in a long-term relationship which produced two children who are now adults. On 23rd February 2005, the parties entered a mortgage agreement with the Grenada Co-operative Bank Limited (the bank) whereby they borrowed the sum of $243,000.00 to purchase property. On 24th February 2005, the parties purchased property together with a one storey incomplete structure thereon situate at Golf Course in the parish of Saint George for the purchase price of $105,000.00. The deed of conveyance for that property was made between one Edris Olive and Mr. Simon and Ms. Isaac. The parties were residing in London in the United Kingdom at the time of the purchase of the property.

[3] Following the purchase of the property, the parties developed and reconstructed the same to include an upper floor and a lower floor. The upper floor, after reconstruction now consists of 3 bedrooms, 2 bathrooms. On 4th July 2005, the parties obtained further financing from the bank in the sum of $40,000.00 by way of deed of further charge. The proceeds of that further charge were used to construct self-contained apartments at the lower floor. Corporate Real Estate Services produced a valuation report dated 16th December, 2009 in which the company

valued the property for the sum of $615,000.00. The parties' claim that their relationship broke down and ended in or about 2010 or 2012.

Ms. Isaac's case

[4] Ms. Isaac pleads that she and Mr. Simon had an intimate relationship which lasted for many years which relationship produced two children. Ms. Isaac's case is that in the year 2005, the parties purchased the property at Golf Course using monies obtained from a mortgage at the bank. In order to secure a mortgage to purchase the property, she and Mr. Simon opened a joint account with the bank and deposited the sum of $7,000.00. Ms. Isaac claims that this money was transferred from her personal account at First Caribbean Bank, Grenada.

[5] Ms. Isaac states that at the time of the purchase, the property was an unfinished one storey structure. The parties agreed that the property would be used partly as their residence while residing in Grenada and as an investment property. Ms. Isaac claims that the parties shared a common intention that the upper floor would be used as a vacation / retirement home and that the ground floor would be used to generate income to cover the mortgage payments.

[6] Further to the mortgage, the parties obtained a further loan in order to construct three self-contained apartments on the ground floor. The apartments were furnished using furniture bought on credit at Court's Grenada Ltd in the sum of $34,055.00. Ms. Isaac claims that since 2010 she has been paying the property taxes and insurance for the property. However, she has been deprived of the use and enjoyment of the same since the relationship broke down in 2010. Therefore, she seeks a declaration that she is entitled to a half share interest in the property.

Mr. Simon's case

[7] In answer to the claim, Mr. Simon admits that the parties had an intimate relationship which began in 1983, and ended sometime in 2012. In or about 2004, Mr. Simon contends that he held discussions with his aunt, Edris Olive, with a view to

purchasing the property. He contends that his aunt agreed to sell the property. He pleads that Ms. Isaac was not involved in these discussions and that she was not aware of the property's state of repair or location. At the time of these discussions, the parties lived together in England. In or about the year 2004, Mr. Simon claims that he arrived in Grenada in order to obtain a loan and inquired from Ms. Isaac whether she would assist in obtaining and repaying a loan for the property. Ms. Isaac agreed with the proposal. In furtherance of the agreement, the parties decided that they would each send monies to Ms. Isaac's mother in Grenada as payments towards the mortgage. Mr. Simon contends that from 2005 to 2015 he gave Ms. Isaac on average GBP £300.00 per month for her to send to her mother in order to service the mortgage.

[8] Mr. Simon denies that Ms. Isaac deposited the sum of $7,000.00 into the joint account. However, he accepts that all initial payments towards the mortgage were made jointly by both parties. With respect to the further loan in the sum of $40,000.00, Mr. Simon argues that he made the majority of the payments towards repaying the same. The proceeds of the further loan were used to construct two apartments on the ground floor of the property and for the property to be fenced.

[9] Mr. Simon accepts that both parties made payments towards property taxes. The monies were sent to Ms. Isaac's mother for that purpose. However, when the property taxes increased, Mr. Simon states that Ms. Isaac ceased making payments and he was forced to make those payments. With respect to the property insurance, Mr. Simon claims that the monies used to pay for the property insurance came from his personal bank account and Ms. Isaac was never responsible for making those payments.

[10] Mr. Simon further avers that the bank informed him that the joint account was not being properly serviced and that the loan was in arrears. He later found out that Ms. Isaac was not depositing any money to the joint account. As a result, Mr. Simon testifies that he opened a separate bank account and instructed the bank to deduct

monies from that account to service the loan. However, it was only until in or about 2014 that the bank began making automatic debits from that account. On or about 25th October 2016, Mr. Simon states that he paid the sum of GBP £31,500.00 equivalent to EC $104,512.72 to the bank thereby liquidating the loan.

[11] With respect to Ms. Isaac's claim that she has been restricted from the property, Mr. Simon testifies that in or about 2012 he was forced to restrict her access thereto. Mr. Simon claims that Ms. Isaac:

(1) Terminated utilities;
(2) Refused to make further financial contributions toward the mortgage, utilities bills and general upkeep of the property;
(3) Forcefully entered onto the property and removed the contents thereof;
(4) Removed the outer gate of the property.

[12] Mr. Simon counterclaims for an 85% share in the property at Golf Course in the parish of Saint George and a 50% share in the property at Mirabeau in the parish of Saint Andrew.

Discussion and Analysis

The law with respect to beneficial ownership of property

[13] Counsel for Ms. Isaac, Ms. Lawrene Griffith, submits that in order to determine the various interest in the property, the court ought to look at the common intention of the parties at the time of purchase. In order to determine that interest, the court must consider the financial and non-financial contributions made by the parties[1]. Ms. Griffith further submits that in determining the monetary value of the parties' shares, the court should consider the use of the post-separation income generated from the property, the parties' unequal bargaining power and Ms. Isaac's exclusion from the property. Ms. Griffith argues that it is not disputed that Mr. Simon made greater

[1] Eves v Eves [1975] 1 WLR 1338

contributions on the payment of the mortgage. However, it is Ms. Isaac's case that Mr. Simon used the funds secured from renting the property to renovate and develop it.

[14] Counsel for Mr. Simon, Ms. Alicia Lawrence, relies on dicta from both the House of Lords and the Privy Council that have stated that where there is joint legal ownership there is joint beneficial ownership. Counsel contends that an onerous burden is placed on the party seeking to show that the beneficial ownership is different from the legal ownership and relies on House of Lords decision in **Stack v Dowden**[2]. In satisfying that burden, Ms. Lawrence states that the court is tasked with examining the common intention of the parties.

[15] The evidence reveals that the titles to the properties situate at Golf Course and at Mirabeau are both recorded in Mr. Simon and Ms. Isaac's names. Therefore, the parties are deemed to be joint legal owners of both properties. It is well accepted law that where there is joint legal ownership of property there is a presumption that the beneficial ownership is also held jointly. In **Stack v Dowden**[3], Baroness Hale stated at paragraph 56 of the judgment that:

> "Just as the starting point where there is sole legal ownership is sole beneficial ownership, **the starting point where there is joint legal ownership is joint beneficial ownership**. **The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership**. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. **In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.**" (My emphasis)

[16] The foregoing elucidation from **Stack v Dowden**, instructs that the burden rests on the party who asserts that the beneficial interests in the property are disparate or unequal to establish the basis for and extent of the disparate interest.

[2] [2007] 2 A.C. 432 at para. 56
[3] [2007] 2 All ER 929 or [2007] UKHL 17

The Golf Course property

[17] Ms. Isaac in her application seeks 50% of the beneficial share of the Golf Course property. Conversely, Mr. Simon is the party who claims that the interest is not jointly owned. He claims that Ms. Isaac's beneficial interest should only be declared to be 15%. According to **Stack v Dowden**, the burden rests on Mr. Simon to prove that the beneficial interest in the Golf Course property should not be divided equally.

[18] With respect to the purchase of the property at Golf Course, Mr. Simon in his defence and counterclaim asserts that he asked Ms. Isaac to assist him to obtain and repay the loan to purchase and develop the property. Ms. Isaac acquiesced and thereafter the parties entered an arrangement whereby "*every month they would each send monies to the Claimant's mother in Grenada so that the loan payments could be made*." Further to that arrangement, Mr. Simon explains *"[o]n average the Defendant gave 300 Sterling Pound per month to the claimant from about 2005 to about 2015 for the Claimant to send to her mother for the purpose of servicing the loan*." Further, Mr. Simon pleads that "…*the Defendant avers that all initial payments towards the said loan were made jointly by the Defendant and the Claimant*."

[19] Mr. Simon in his pleadings states that Ms. Isaac was not involved in the initial discussion that he had with Ms. Edris Olive to purchase the property and had no idea of the condition of the property. However, while that may be so, Mr. Simon admits that he held discussions with Ms. Isaac to join the mortgage and assist with its repayments. This is quite credible evidence of what may transpire where one partner in a relationship seeks to acquire property. Thus, even if the acquisition of the property was Mr. Simon's idea, the evidence is clear that both parties agreed to jointly acquire the property and to enter into a mortgage to finance the acquisition.

[20] Ms. Isaac claims, in her pleadings, that she deposited the sum of $7,000.00 from her personal bank account at First Caribbean Bank in the parties' joint account held at Grenada Co-operative Bank which was used to service the loan. Mr. Simon denies this assertion and puts Ms. Isaac to strict proof of it. I observe that apart from

Ms. Isaac's assertion, she has not tendered any proof of that payment of $7,000.00 into the joint account.

[21] In respect of the mortgage, the bank's offer letters dated 4th May, 2004 and 15th June, 2005 show that both parties were engaged by the bank on the terms of the mortgage. The original terms of the mortgage stated:

> "Dear Mr. Simon and Ms. Isaac
> We are pleased to advise that your request for a loan has been approved subject to the following terms and condition.
>
> Amount of Loan: $243,000.00
> Purpose: To purchase residential property and provide additional funds for renovations.
> Rate of Interest: 8.75% per annum
> Terms of repayments: $2,428.66 per month inclusive of interest…
> Term: 15 years…"

[22] The evidence reveals that they were co-borrowers with Mr. Simon being the principal borrower. The May 2004 offer letter states that the purpose of the mortgage was *"[t]o purchase residential property and provided additional funds for renovations*." The June 2004 offer letter shows that a further sum of $40,000.00 was borrowed by the parties. The balance of the loan increased to $283,000.00; the monthly repayment to $2,500.90 and the term of years increased to 20 years.

Parties' contributions to the mortgage repayments

[23] Mr. Simon pleads that on average he deposited £300.00 from 2005 to 2015 which amounts to £36,000.00 or EC $144,000.00. His evidence shows that he made monthly payments towards the mortgage on average in the sum £300.00 to £400.00[4] between 2004 and 2007. Between 2015 and 2016 those monthly payments increased on average to £600.00. This is clear proof of Mr. Simon's contribution to the mortgage payments. Ms. Isaac in her evidence[5] exhibited copies

[4] List of Documents for the Defendant referred to as "HS2"
[5] Additional Documents submitted by the Claimant filed 18th November 2022.

of receipts which show that in the year 2008 she deposited between $514.80 and $2,277.45 which is equivalent to approximately £100.00 and £400.00 given the currency exchange rates of £1 to EC4 as stated in the bank's receipts. Ms. Isaac further states that she ceased making payments toward the mortgage in 2011[6]. Further, I accept Mr. Simon's pleading that the initial payments towards the mortgage were made jointly by the parties[7]. I assess her average monthly contributions to be about £350.00 up to 2011 as £25,200.00 or EC $100,800.00.

[24] The totality of the evidence, including Mr. Simon's admission that initially the parties jointly contributed toward the repayments to the mortgage suggests that both parties jointly made repayments to the mortgage up to 2011. However, the parties' financial contributions in this regard were markedly unequal. Additionally, it was Mr. Simon who was left to make the further payments to the mortgage when Ms. Isaac ceased contributing to the same. Further, the evidence shows that it was Mr. Simon, who sometime in October 2016 paid the bank the sum of £31,500.00[8] or EC $104,512.72 to liquidate the outstanding mortgage sum in full. In sum, Mr. Simon's contribution to the mortgage repayments far outweigh those of Ms. Isaac.

Contributions to the property's upkeep

[25] Ms. Isaac states in her pleadings that she paid the sum of $34,055.00 to Courts Grenada Ltd for furniture which was bought for the house. Mr. Simon denies this and answers that he made most of the payments to Courts. The document produced from Courts Ltd (Grenada) do not disclose which party made those payments to the parties' account held with the company. Mr. Simon alleges without contestation from Ms. Isaac and I so accept that sometime in 2011, Ms. Isaac entered the property and removed all of the furniture and other household items. Neither party has presented sufficient evidence to conclude or attribute any or all of the Courts

6 See para. 21.5 of the Claimant's closing submissions.
7 See para. 8 of the Defence and Counterclaim
8 See exhibit "HS11" referred to in the Defence and Counterclaim

payments to either party. Therefore, I find that on a balance of probabilities the payments to Courts were a joint effort by both parties.

[26] Ms. Isaac then presents property tax statements and asserts that she solely paid the property taxes from the year 2010 to present and that she paid the utility bills and property insurance. Again, the evidence provided by Ms. Isaac does not state who made those payments. The receipts merely state that the payments were received on behalf of both parties. Therefore, I am unable to assess these payments as sole contributions by Ms. Isaac. I find that the above payments were made jointly by the parties.

Rental Income of the property

[27] Ms. Isaac pleads that property was rented from 2005 to present to several persons yielding rental income in excess of $70,000.00. Ms. Lawrence alludes to Ms. Isaac's efforts to rely on the rental income of the property in her attempts to quantify her contribution. However, as rightly stated by Ms. Lawrence, at no point has Ms Isaac provided clarity on how she arrived at this sum. I agree with Ms. Lawrence that Ms. Isaac has failed to plead, particularise and prove her evidence that the property yielded yearly rental income of $70,000.00.

[28] Ms. Isaac also pleads that she has not benefited from that rental income and that it was the intention of the parties to rent the ground floor apartments to generate income to cover the mortgage payments. Mr. Simon in his evidence avers that for a considerable period the property was uninhabitable and that no tenants occupied it. All monies that were obtained from the renting of the apartments were paid into the joint account. This assertion is supported by Ms. Isaac's witness, Mr. Neehad Samaan, one of the tenants of the property, who avers that he was instructed to pay his rent into the parties' joint account at the bank. There is no evidence that the proceeds of rent were not deposited as instructed. Further, there is no evidence that proceeds of the rent were not used to service the mortgage as intended.

Maintenance and improvement of the property

[29] Ms. Isaac pleads that she contributed toward the maintenance and upkeep of the property. However, she has not exhibited any evidence of her contributions in this regard. Her witness Kellon Charles did not assist her much in her efforts on this score. In his evidence Mr. Charles states that he was contracted by both parties to complete building works to the first-floor apartment and to create two apartments on the ground floor. Mr. Simon vigorously contests the claim that Ms. Isaac contributed to the maintenance and improvement of the property. Mr. Simon has exhibited several receipts which reveal that he purchased cement, cement blocks, paint, among other construction materials for the repair and upkeep of the property. There is also evidence from David Clarke and Augustus Ettienne who were contracted by Mr. Simon to perform certain works on the property. Mr. Ettienne states that he constructed four wrought iron gates for Mr. Simon to replace the front gate that was allegedly removed by Ms. Isaac. Mr. Clarke states that he carried out general construction work for Mr. Simon including painting of interior walls, doors and cupboards and concrete works in the yard of the property.

[30] I find that Mr. Simon has presented credible evidence of his contributions to the development and upkeep property. Ms. Isaac has not met this standard of proof. Even if she was to be credited to contributing to the development and upkeep of the property, it is quite apparent that Mr. Simon's contributions far exceeded her contributions.

[31] All in all, it is clear that the evidence in this case rebuts the presumption of joint beneficial ownership of the property. Mr. Simon asks the court to assess the extent of sharing as 85% in his favour. My assessment of the totality of the evidence suggests to me that this request is fair and appropriate in all the circumstances but I am of the view that the evidence reveals that Ms. Isaac is entitled to a little more than 15%. With respect to the extent of the interest therefore I find and so declare that Ms. Isaac's contributions to the property are assessed at 20% and Mr. Simon's contribution at 80%.

Counterclaim for 50% share in the Mirabeau Property

[32] It is uncontroverted that the property at Mirabeau, Saint Andrew is recorded in the joint names of the parties. A deed of conveyance dated 30th August 2006 shows that the parties together purchased property at Mirabeau for $976.00 from one Mary Mason[9]. As stated earlier, where there is joint legal ownership there is a presumption of joint beneficial ownership. In this case, Mr. Simon in his counterclaim seeks 50% of the beneficial interest in the Mirabeau property. Ms. Isaac has not denied that Mr. Simon is entitled to a half share of the property in her pleadings nor has she addressed this property in her evidence or submissions. Apart from Ms. Isaac's denial of the assertions in the counterclaim, she has not led any evidence to rebut the presumption of the joint beneficial ownership. Therefore, I find and order that Mr. Simon and Ms. Isaac are each entitled to a 50% beneficial share or interest in the property situate at Mirabeau, Saint Andrew.

Counterclaim for breach of contract

[33] Mr. Simon claims that in or about 2009, Ms. Isaac orally agreed that she would accept the sum of £8,000.00 in exchange for being removed from the mortgage and all involvement with the property. Further, he claims that Ms. Isaac accepted the sum of £8,000.00 being the sum of £6,000.00 as Ms. Isaac's investment and an additional £2,000.00 which was gratuitous. Notwithstanding, her acceptance of the proposal, Mr. Simon asserts, Ms. Isaac reneged on this agreement and repaid him the sum of £6,000.00 leaving a balance of £2,000.00 together with interest of £30.00 per month. As at the date of filing of the counterclaim, Mr. Simon complains that the sum of £5,780.00 was due and owing.

[34] I note that Mr. Simon relies on two letters[10] signed by Ms. Isaac. One of the letters dated 9th October, 2007 states that "*I, Deanne Isaac have repaid Kenny Simon by*

[9] Attached to the Defence and Counterclaim and referred to as "HS19"
[10] Exhibit "HS18" attached to the Defence and Counterclaim.

cheque payment in between April and June 2006, £6000.00. The balance of £2,000 (Two thousand pounds) to be paid back by the end of October 2007". Mr. Simon also exhibited an undated letter allegedly signed by Ms. Isaac which states "*…£30 a month interest on the £8000 which was given to me for the property in Grenada which was to buy me out but I changed my mind. Only £6000 was repaid and £2000.00 plus £30 interest remains to be paid. £8000 was given by Kenny to me in April 2006."*

[35] This documentary evidence has not been disputed by Ms. Isaac. Thus, it is undisputed that Ms. Isaac is bound by her bargain. The sum of £2,000.00 together with accrued interest must be repaid to Mr. Simon by Ms. Isaac. I find and order that Mr. Simon is entitled to special damages in the sum of £5,780.00 together with interest at the rate of 3% per annum from the date of filing of the counterclaim (4th November, 2016) to the date of judgment.

Conclusion

[36] For all these reasons, it is hereby ordered that:

(1) The claim filed on 20th September, 2016 is granted in part.

(2) Deanne Isaac (Ms. Isaac) is entitled to 20% beneficial interest in the property known as Lot No. 7 Section C situate at Golf Course in the parish of Saint George measuring 5,343 square feet which in mentioned and referred to in a Deed of Conveyance dated 24th February, 2005 recorded in Deeds and Land Registry of Grenada in Liber 10-2005 at page 587 (the property).

(3) The defence and counterclaim filed on 4th November, 2016 is granted. In part

(4) Henry Simon (Mr. Simon) is entitled to 80% beneficial interest in the property.

(5) Mr. Simon is awarded special damages in the sum of £5,780.00 together with interest at the rate of 3% per annum from the date of filing of the counterclaim (4th November 2016) to the today's date.

(6) The property is to be valued within 60 days of today's date by a valuer. The costs of the valuation shall be borne equally by the parties.

(7) Mr. Simon shall have the first option to purchase Ms. Isaac's 20% share of the value of the property contained in the valuation within 90 days' receipt of the valuation.

(8) If Mr. Simon fails or refuses to purchase Ms. Isaac's share in the property in the aforesaid manner, the property shall be advertised for sale by a reputable real estate agent. Thereafter, the property shall be sold and all the sums owed on any mortgage, taxes and all other costs with respect to the sale of the property shall be deducted from the proceeds of sale. Ms. Isaac shall be paid 20% of the net proceeds of sale and Mr. Simon shall be paid 80% of the remaining proceeds.

(9) Mr. Simon and Ms. Isaac are each entitled to a 50% beneficial interest in the property situate at Mirabeau in the parish of Saint Andrew measuring 3,525 square feet which is mentioned and referred to in the Deed of Conveyance dated 30th August 2006 and recorded in the Deeds and Land Registry in Liber 11-2007 at page 782.

(10) There shall be no order as to costs in light of each party enjoying partial success on their claims.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar