

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
CLAIM NO: ANUHCV2017/0506

In the Matter of the Registered Land Act Cap. 374

And

In the Matter of the Partition Act Cap. 305

And

In the Application by NOELLA BROWN for partition of land jointly owned by
herself and COLIN O'NEAL BROWN

BETWEEN:

NOELLA IRIS BROWN

Claimant

And

COLIN O'NEAL BROWN

Defendant

2020: November 17th

2022: February 18th

Judgment

Appearances:

Vere Bird III appearing for the Claimant

C Debra Burnette appearing with Mandi A Thomas for the Defendant

[1] **Robertson J.** Introduction. The parties to these proceedings were married in December 1987 and parented four children. The parties were separated in February 1995 and divorced in 2011. Prior to the

separation, the parties became co-proprietors of two parcels of property¹. Specifically, the parties acquired the properties described as **Registration Section: Hodges Bay & Thibou's Block 43 2096A Parcel 149** [Parcel 149] in 1993; and **Registration Section Potters & Belmont, Block 613 1991F Parcel 86** [Parcel 86] in June 1992.

[2] During the period of cohabitation, the parties resided at the home of the claimant's parents and at some point, at a rented accommodation in Piggots. Parcel 86 was purchased with a dwelling structure which was occupied by a tenant who continued to reside on the property for a short period after purchase. Constructional work commenced on Parcel 86 sometime thereafter. The claimant left Antigua and Barbuda in February 1995 and since that time the parties have lived separate and apart. When the claimant left Antigua the parties cohabited in Piggots. During the period that the claimant resided in the United States of America the dwelling house on Parcel 86 was re-built or re-structured. The claimant continues to reside in the United States of America and the defendant resides in the dwelling house on Parcel 86.

[3] **The Reliefs Sought.** The parties seek that their co-proprietorship of the respective Parcels be severed. In her pleadings, the claimant initially sought that tenancy be severed and the properties be placed into the sole name of the claimant². In the claimant's reply to request for information filed on 9th May 2018 the claimant sought that the properties be sold, and the proceeds of sale be proportioned equally between the parties³. While under cross-examination the claimant indicated that the desire was to obtain 50% interest in Parcel 86 and that Parcel 149 be placed into her sole name. The claimant also indicated that her interest was for the children of the marriage to be secured with opportunities for property ownership. In submissions filed the counsel for the claimant indicated that as a consequence of the "*Claimant's financial contributions*

[1] ¹ The endorsements on the Land Register:

Registration Section: Hodges Bay & Thibou's Block and Parcel No. 43 2096A 149 "COLIN BROWN and NOELLA BROWN both of Potters Village, Saint John, Antigua, as Joint Tenants" (endorsement dated 27th September 1993; instrument number 3509/93).

Potters & Belmont Block and Parcel No. 613 1991F 86 "COLLIN BROWN and NOELLA BROWN both of Piggots, St. John's, Antigua & Barbuda" (endorsement dated 5th June 1992; instrument number 2593/1992).

² See paragraph 11 of affidavit in support of claim filed on 16th October 2017.

³ See paragraph 2 of reply to request for information filed by the claimant.

to purchase the two parcels of land should entitle her to have the parcel located at Hodges Bay & Thibout's transferred into her sole name".

[4] Conversely, the defendant disputes that the claimant has retained a beneficial interest in the properties and contends that the beneficial interests rest entirely in favour of the defendant and the legal interests ought to be similarly placed. In summary the counsel for the defendant contends that the beneficial interest rests with the defendant given the common intention was changed subsequent to the claimant having left the country to reside in the United States of America.

[5] **Issue for Determination.** This court is required to determine the beneficial interest held by the parties and should the co-ownership be severed. This is determined by addressing the presumptions which arise from ownership by tenants in common and by joint tenants where there is no specific declaration as to beneficial interests.

The Law.

[6] It is accepted that where parties are named on title documents and there is no declaration and/or evidence as to the beneficial interests, the parties named hold legal and beneficial interests in equal shares. This is in keeping with the equitable maxim equity follows the law. This presumption may be rebutted if it can be shown that beneficial interests are to be treated differently from the legal interests. The burden of rebutting the presumption rests upon the party who asserts that the beneficial interests are held in a manner that is different from the manner in which the legal interests in the property are held. This task, in the words of Baroness Hale in the House of Lords case of **Stack v Dowden**⁴, is not to be "*lightly embarked upon*". That court indicated that "*In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint name cases it is also unlikely to lead to a different result unless the facts are very unusual*"⁵.

⁴ [2007] 2 All ER 929.

⁵Stack v Dowden [2007] UKHL 17 at [68].

[7] It is to be noted that the common intention of parties may change over time. In the case of **Stack v Dowden**, Baroness Hale indicated at paragraph 70 that “*There may also be reason to conclude that, whatever the parties’ intentions at the outset, these have now changed. An example might be where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is significantly different from what they had then*”. In the case of **Jones v Kernott**⁶, the court is reminded that “*the whole course of dealing ...in relation to property*” should be given a broad meaning, enabling a similar range of factors to be taken into account as might be relevant to ascertaining the parties actual intentions.” Financial contributions are relevant but there many other facts which might enable the court to determine the beneficial interests.

[8] Accordingly, in the circumstances of this case this court must not only treat with the intentions at the time that the properties were acquired but must also consider whether, having regard to the whole course of dealings, the initial intention was changed.

The Application of the Law and Analysis.

[9] The properties in question, Parcels 86 and 149, were purchased in 1992 and 1993, respectively. Parcel 86 was purchased with a structure on the land for the price of \$35,000.00 and with the exception of a loan which the defendant indicates was US\$500.00 which was borrowed from the claimant’s mother, the initial acquisition of the property was financed by the defendant. The defendant notes that the funds borrowed from the claimant’s mother were repaid. The claimant indicated that the parties borrowed US\$15,000.00 from her mother, some of which was used to purchase the property and the rest for the renovation and furnishings of building on Parcel 86. This court accepts the evidence of the defendant that the funds were repaid to the mother of the claimant. Additionally, with respect to the property a loan was obtained from a bank and the loan was serviced by the defendant. The defendant also used a loan from a hardware, his funds acquired from his employment and funds from his severance package to, over time, construct the structure which at present exists on Parcel 86.

[10] Parcel 149, a parcel of land, was acquired in 1993 for the price of \$45,000.00 with funds from a loan which was serviced by the defendant and through funds from the sale of shares which the defendant held in Cable and Wireless.

⁶ [2012] 1 All ER 1265.

[11] The properties were acquired in the names of the parties. The defendant contends that, the property was placed in the names of the parties as a consequence of guidance received from a representative from the bank from which he sought funds. In this court's view a more plausible reason for the joint proprietorship arose from the nature of the domestic relationship between the parties. Additionally, it is noted that as it relates to Parcel 149 the defendant in his evidence admits that parcel 149 was purchased for the benefit of the parties.

[12] This court finds that at the time of the purchase of the properties in question there was a common intention that the parties would hold equal legal and equitable interests. This court made this observation in the absence of any evidence to rebut this presumption and having noted that:

- a. The parties were living at the home of the parents of the claimant rent free and later moved into rented accommodations in Piggots but had a common intention to acquire a matrimonial home for the family unit which included four children. Parcel 86 was purchased for this purpose.
- b. The defendant's evidence is that the property at Hodges and Thibou was "*purchased by me and conveyed in both our names with the understanding between the Claimant and I that it was an investment in our future*".
- c. The evidence of the defendant that he paid toward a training programme at Luther Wynter Pre-School Child Development Centre to permit the claimant to pursue studies which would give her greater earning power in furtherance of the goals and objectives of the family.
- d. Until the claimant left Antigua there was no evidence that the parties intended to operate in separate living circumstances. In fact, the evidence of the defendant is that the claimant left Antigua to avoid charges which were brought before the Magistrate's court in an unrelated matter. This reason has been disputed by the claimant.

The Whole Course of Conduct.

[13] In considering whether the common intention of the parties changed at any time subsequent to the purchase of the properties the court is required to look at the entire course of conduct between the parties. As previously stated, this permits the court to apply broad considerations such as financial and well as non-financial matters.

[14] It is clear from the evidence that, as with many domestic relationships, the parties had roles within the relationship as they relate to the contributions to the family unit. In the household, the claimant was the homemaker and while the defendant breadwinner. Despite the evidence of the defendant that it was his intention that the claimant would pay a bigger financial role, the reality is that the claimant held the role as homemaker and this increased role in financial affairs did not materialise while the parties cohabited. As homemaker, the claimant assumed the tasks of washing, cooking and cleaning and looking after the four children of the couple. The claimant's evidence is that she occasionally worked as a domestic helper during summer holidays, that she worked at a clothing store in the early 1990's and at a fast-food outlet in about 1993. However, there is no doubt that the financial responsibilities fell upon the shoulders of the defendant.

[15] The defendant was the breadwinner. He was employed at Cable and Wireless from 1983 to 2001 when he was made redundant and paid a severance. While employed at Cable and Wireless the defendant was rostered to work shift hours. Although the defendant in his evidence contends that his mother, the children's paternal grandmother, greatly assisted with the care of the children of the parties this court is of the view that the primary responsibility for the day-to-day care of the children of the marriage fell to the claimant. This court also notes that the claimant's role as the caregiver of the children would have permitted the defendant to not only work shift hours at Cable and Wireless but also to be available to engage in multiple streams of income.

[16] This court also makes the observation that it is in the execution of each party's respective roles, the claimant as the homemaker and the defendant as the breadwinner, generally accounts for the inability of the claimant to address questions regarding the finances in the acquisition of the properties and monthly payments for the properties while the parties cohabited.

Interest Held by Parties in Parcel 86 and 149.

[17] In the consideration of the interest held by the parties the court is required to consider the whole course of dealings and to determine the shared intention of the parties. The parties in engaging in their respective roles can be said to have, in some respect, acted to their detriment in the context of the shared common intention. The question which arises for consideration is whether that shared intention changed over time. Such change if any, may be determined from the words or conduct of the parties.

[18] On the matter of Parcel 86 which was purchased in 1992, it is evident that some work commenced on the building prior to the claimant's departure from Antigua. The evidence of the claimant is that she contributed to the building of the family home by transporting the workmen to and from the work site on the property and was also responsible for transporting the workmen for the collection of building materials.

[19] The claimant left the country in on 11th February 1995 to reside in the United States of America and thereafter the parties remained separated until the dissolution of the marriage in 2011. This departure was three years after the property was purchased. When the claimant left the country the dwelling house on Parcel 86 was incomplete. The building which now stands on the property not the same building which previously existed. The evidence of the defendant was that the initial building was destroyed by the passage of Hurricane Luis. There is no evidence that the claimant treated with the properties after departing Antigua.

[20] On the matter of contributions to the property, the claimant contends, and the evidence supports that the claimant continued to be the primary caregiver to the children of the marriage. The children of the marriage were generally supported by the claimant after the parties separated. The claimant further contends that this circumstance permitted the defendant to obtain the financial resources to make the necessary improvements in Parcel 86.

[21] On the matter of the structure on Parcel 86 it is clear that the structure which in on the Parcel 86 is not the structure which was present when the claimant left Antigua in 1995. While the actual departure of the claimant did not change the common intention⁷ regarding their continued ownership in the property it is clear that sometime while the parties were apart the parties arrived at the conclusion that the marriage was to be dissolved. The parties thereafter proceeded with their lives. The defendant built on Parcel 86 and the claimant admitted that the structure that is now on Parcel 86 is not the structure that she knew when she left Antigua. There is no evidence that the claimant expressed any real interest in the properties in Antigua after leaving Antigua save when the matter of property settlement arose consequent upon the parties being divorced.

⁷Reference is made to the evidence of the defendant that the claimant expressed a desire that the parties would be reconciled.

[22] **An assessment of the Beneficial Interests.** This court has accepted the evidence that the financial contributions for the acquisition of the properties were made by the defendant. The claimant spoke to contributions in kind with regard to the initial construction before she left but this is not the building which currently stands on the property and would account for there being any improvements to the property.

[23] This court also accepts the evidence of the claimant that the claimant's contributions in the way of homemaker which would, in part, have permitted the defendant to have disposable income and to engage in multiple streams of income. The court notes that the claimant cared for the children of the marriage after the claimant migrated to the United States of America. At the time when the children joined the claimant the eldest child was 14 years old. The claimant's care for the children was generally without financial assistance from the defendant. This court is not inclined to dismiss the contributions of the claimant as simply being the responsibility of a mother as has been suggested by the counsel for the respondent.

[24] Additionally, this court notes that three years after parcel 86 was purchased and two years after parcel 149 was purchased the parties separated, were never reconciled and later became divorced. This court further notes that after the parties separated the parties generally lived separate lives, and each proceeded along their respective individual paths. In this context the common intention of the parties to hold the properties for the household shifted. This change ought to be reflected in the declaration of ownership.

[25] Accordingly, this court determines that:

- a. The claimant is beneficially entitled to 35% of the value of the land for Parcel 86 with the defendant being beneficially entitled to 65% of value. The defendant resides on Parcel 86 thus the court orders that the land be valued within 60 days of today's date and that the defendant pay to the claimant her determined beneficial interest on the value of the land within 160 days from the date upon which the valuation is received.
- b. The beneficial proprietorship of Parcel 149 is apportioned similarly, the claimant having 35% and the defendant 65%.
- c. There shall be liberty to apply.
- d. Each party to bear their own costs.

M. Robertson
High Court Judge

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Registrar