

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2019/0007

BETWEEN:

ROSALIND PRENTICE EDDY

Claimant

And

REGINALD ANTHONY

Defendant

Appearances:-

Ms. Zoie Hamilton with Mr. Jason Hamilton for the claimant.
Mrs. Claudette Jenkins for the defendant.

2021: May, 04, 05
November 29

JUDGMENT

[1] **WARD, J.:** The claimant and Reginald Anthony, deceased were involved in a cohabitational relationship for many years until his death in 2018. He died intestate. Tensions arose between her and the defendant, who is the son of the deceased, over four properties owned by the deceased, namely:-

(i) (a) Land ID #3333 measuring 614 square feet with building thereon; (b) Land ID #3334 measuring 683.7 square feet with building thereon; (c) Land ID #3332 measuring 3261 square feet with a 3-Storey building thereon; and (d) Land ID # 3335 measuring 589 square feet with building thereon, all situated at Fort Thomas Road. Basseterre, St. Kitts

(ii) Land situate at Lot No. 5 at Camps Commercial Development in the parish of St.

George, St. Kitts

(iii) Land with building thereon situated at Lot No. 72 at Pine Gardens Housing Development in the parish of St. George, St. Kitts.

(iv) one 1997 Ford Ranger Pick-Up Truck Registration number P6320.

- [2] The legal title to all of these properties is in the name of the deceased. The claimant, therefore, seeks declarations in respect of her beneficial interests in each of the properties. The defendant was appointed as the personal representative of the estate of the deceased with a limited grant for the purpose of these proceedings, pursuant to an order of Ventose, J dated 27th June 2019. He resists the claim.

The claimant's case

- [3] Ms. Eddy states that she became Involved in an amorous relationship with the deceased, whom she refers to as "Sonny", from around 1975. At the time, she was residing at Malone Avenue while the deceased was living in shared family spaces in Irishtown. During their courtship, he would visit her home often. There he met her children. He made an effort to get to know her children; often bringing ice cream or sweets and asking how their day was. She began performing small chores for the deceased such as cooking for him and doing his laundry. After a few years, in or around 1978, she and the deceased began discussing living together. They made the decision to purchase property at Fort Thomas Road, Basseterre, St. Kitts.
- [4] This relationship developed into a cohabiting union in 1982 when he asked her to move in with him at the Fort Thomas Road property. However, prior to this, they had developed a business relationship in the latter half of the 1970's when he requested that she terminate her employment as a domestic employee to assist him in the construction and operation of a convenience store, which he intended to carry on at the property. On its completion, she assumed the role of shopkeeper, ordering the stock, working at the front of the store, managing the finances and organizing and cleaning the store. The deceased continued doing construction, while the store was her responsibility. She paid the relevant business taxes on the property. They subsequently opened a joint account at the Bank of Nova Scotia in the early eighties, into which the profits of the convenience store were deposited. This was her only source of income and the profits of the store were regarded as for the benefit of the deceased and herself. Eventually they opened another joint bank account at the Royal Bank of Canada into which the profits of the store were deposited. The

deceased also deposited sums of money into it monthly from his construction endeavors. Household expenses like electricity, water, and food were taken from this joint account. Ms. Eddy also continued to support her children with the monies from the joint account. According to her, this joint account was never 'policed' by either her or the deceased. On her father's passing in 2004, she deposited her inheritance of \$15,000.00 East Caribbean Currency into the account for it to be used for their joint benefit.

- [5] Ms. Eddy states that she eventually procured a loan from the St. Kitts Development Bank for the purpose of expanding the store which was in need of a deep freeze and additional stock.
- [6] As the years went by, they decided to improve upon the property in order to house their family. They constructed four other buildings on the land. The deceased did most of the construction work and asked for her assistance. Materials were purchased using funds from the joint account and the deceased's personal account. Currently, Ms. Eddy's daughter and her son live in one of the properties and another grandson lives in another. Ms. Eddy's granddaughter lived with her and the deceased from the age of six. The deceased regarded her children and grandchildren as his.
- [7] Ms. Eddy says she cooked for the deceased almost daily, providing every meal. She also washed all of his laundry and cleaned the premises. Similarly, the deceased assumed the role of 'husband', ensuring that she and her children were provided for. When he fell ill in the 80s, she accompanied him to Puerto Rico for a second opinion consultation. His diagnosis required surgery which was paid for from the joint account.
- [8] Ms. Eddy claims to have managed many of the deceased's construction affairs, prepared the wage slips for his employees and accessed his personal business account for the purpose of paying the workers and keeping track of his accounting.
- [9] Regarding the property at Camps, Ms. Eddy claims that the deceased indicated to her that it was 'we thing'. The purchase price was paid from their joint account and from the deceased's personal account.
- [10] Regarding the property at Pine Gardens, Ms. Eddy claims that the deceased told her that he was going to purchase that lot of land in order to build her a property that she could rent out so as to gain more income. In terms of payment for this property, she explains that prior to their relationship the deceased had properties in St. Maarten. The majority of the monies for the purchase of the

Pine Gardens lot were taken from the sale of one of his properties in St. Maarten together with a portion taken from their joint account.

[11] As it relates to the Ford truck, Ms. Eddy says this was purchased with funds from their joint account.

[12] Ms. Eddy claims she is entitled to an equal beneficial share in the properties by virtue of her contribution of labor, time and money to the accumulation of the deceased's wealth, which allowed him the financial ability to make the investments in all of the properties.

The defendant's case

[13] The defendant's case is that the deceased was a self-made businessman. He had migrated to St. Maarten in the 1960's where he resided for several years. He had grown to become a successful and reputable contractor there. From these contracts he amassed wealth, and was able to acquire income earning properties.

[14] In 1970, the deceased returned to St. Kitts with Catherine Hercules, the mother of the defendant. They resided at the family residence at Fort Thomas Road, opposite the property in dispute. The deceased returned to St. Maarten for about a year, before returning to St. Kitts to reside permanently. He purchased the property (land) situated at Fort Thomas road from one David Charles. Soon thereafter, he commenced construction of a three (3) storey building on the land. The building was constructed with the assistance of workmen including Rudolph Dore, Charles Brown, and James Castor, now deceased. The sole female on the construction site, assisting where possible, was the defendant's mother.

[15] On completion of the basement portion of the building, the deceased began operating a restaurant/disco. Catherine Hercules and Barbara, now deceased, worked in the restaurant until around 1978. On completion of the first floor, the deceased began operating a chicken outlet, then a grocery store and finally a Mini-Mart or Convenience Store. Sometime around late 1978, Ms. Eddy began working in the business as a clerk. At that time, she resided at Malone Avenue with her family. Sometime during the middle of the 1990s, the deceased left the family home and went to live in the 3-storey building he had constructed on the lands at Fort Thomas Road. Soon thereafter Ms. Eddy left her home at Malone Avenue and went to live with him.

- [16] However, sometime in the latter part of 1990, the deceased began constructing with his own funds, a dwelling house for Ms. Eddy upon lands situated at New Road, St. Peters, which were allocated to Ms. Eddy by the Government. This property is and was at all material times for the sole use and benefit of the claimant. The house remains incomplete.
- [17] As it relates to the Mini-Mart/Convenience Store, the defendant's case is that it was never a financial success. It went through different phases, good and bad, until it closed permanently around 2012. That space was thereafter converted into living quarters for Ms. Eddy's family.
- [18] According to the defendant, he and the deceased lived and worked together for many years and even shared a bedroom until the mid 1990's, when he relocated to the 3-storey property. He denies that the deceased was ever in any business relationship with Ms. Eddy. She worked in the shop and he carried on his construction and other businesses. The defendant has no recollection of the claimant having anything to do with the deceased's businesses, save and except the shop.
- [19] As it relates to the bank accounts, the defendant claims that as far as he knew the deceased never sought financial assistance from any bank or financial institution for any of his business ventures. He dealt strictly in cash, and any loans obtained by Ms. Eddy from the Development Bank of Saint Christopher and Nevis under the pretext that the funds were needed or used for expansion of the convenience store is not true. The deceased was a successful building contractor and the monies made from those jobs could easily finance the shop.
- [20] The defendant accepts that there is in existence a joint account bearing the name of the deceased at Royal Bank of Canada but says his father did not operate that account with Ms. Eddy. He did no more than occasionally transfer funds from his sole personal account to that joint account. He operated an account in his sole name at Royal Bank of Canada, Number 702-350-0, in which some of the monies earned by him were deposited. The defendant claims to know this because he had cause to deal with the said account at the request of the deceased. For example in 2016 he withdrew \$19,600 from that account which was used to pay for surgery which the deceased underwent in Nevis.
- [21] As it relates to the 1997 Ford pickup truck, the defendant stated that the deceased was the sole owner of this vehicle which he utilized mainly in his business as a building contractor. This was his sole means of transportation. Upon his death, Ms. Eddy handed over the said vehicle to the

deceased's nephew, Irod "Ira" Anthony, claiming that the deceased wanted him to have the vehicle. The deceased purchased a vehicle "Toyota Corolla" for Ms. Eddy some years ago and registered it solely in her name.

[22] As it relates to the land situate at #72 Pine Gardens, it is the defendant's case that this was allocated by the National Housing Corporation to the deceased. At no time did the deceased indicate that this property was for the benefit of Ms. Eddy and himself; neither did he request the National Housing Corporation to include her name on the property.

[23] The house that is constructed on the property was built from the deceased's own monies obtained from building contracts. He built this dwelling house in stages by himself, assisted by the defendant. At the time of its construction, the convenience store, "Sunny Side Grocery Shop," was no longer in operation.

[24] As it relates to the property at #5 Camps Commercial Development, the defendant says that land was allocated by the National Housing Corporation to the deceased and his brother Reynold Anthony in October, 2003. It comprised 15, 665 square feet and was sold at \$4.00 per square foot. All payments towards the said land were made on account of both Reginald and Reynold Anthony. At no time was there any indication by the deceased that this property was acquired for the benefit of Ms. Eddy and the deceased.

[25] The defendant says that the monies obtained from contracts and his other business ventures account for the deceased's financial success. Among the government building contracts secured by the deceased over the years were the Mc knight Community Centre, Pond's Pasture Community Centre, a Government building in Tabernacle and low income homes. He also did construction for the National Housing Corporation and held building contracts with private persons. In addition to the building contracts, the deceased also carried on a successful, wholesale and Liquor shop at Fort Thomas Road. The monies from those contracts and other business ventures were used by the deceased to purchase land and construct the buildings of which he is the sole registered proprietor and owner.

Issues

- [26] This is a case where the legal title to the properties in dispute is in the sole name of the deceased. The task is to determine whether there was a common intention to share the properties, and, if so, the extent of the beneficial interest of the claimant and the deceased.

Legal principles

- [27] The approach of the courts in claims which centre on beneficial ownership in property in the current scenario is as articulated by Baroness Hale in **Stack v Dowden**.¹ The starting point proceeds from the principle that where there is sole legal ownership there is sole beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. In cases of sole legal ownership the onus is upon the non-owner to show that she has any beneficial interest at all. If she surmounts this hurdle, she must then demonstrate exactly what that interest is.
- [28] Webster J.A. expressed the principle succinctly in **Paul Webster v Lois Dunbar**² when he stated:
- “In its simplest terms it is that the claimant must prove that there was a common intention between the parties that they should share the beneficial title, and the claimant acted to his or her detriment on the basis of that common intention...Common intention can be established in one of two ways. Firstly, by direct evidence of an agreement between the parties that the person without the legal title will have a beneficial interest in the property. Secondly, where there is no express agreement but the parties have conducted themselves in such a way as to show that they intend joint ownership the court will draw the inference of a common intention that they should both have a beneficial interest in the property. In both cases the claimant must go on to prove that he or she acted to his or her detriment on the basis of the express or inferred common intention that in so acting he or she would acquire a beneficial interest.” (At paras 20 & 21).
- [29] As to the second hurdle of establishing the exact interest of the non-owner, it is sometimes the case that the parties have adverted their minds to the issue and expressed themselves in such a

¹ [2007] 2 WLR 831 at 849, para 56.

² HCVAP2011/0004

way as to make their intention plain. But this may be divined in other ways as described by Chadwick, L.J. **Oxley v Hiscock**.³:

'... in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have—and even in a case where the evidence is that there was no discussion on that point—the question still requires an answer. It must now be accepted that...the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And, in that context, “the whole course of dealing between them in relation to the property” includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home.' (Para 69).

Application to facts

The Fort Thomas Road Property

- [30] In line with the principles stated above, Ms. Eddy must first demonstrate that she has a beneficial interest in the Fort Thomas Road property by showing that there was a common intention that she should have a beneficial interest in this property and that she acted to her detriment on the basis of an express or inferred common intention that in so acting she would acquire a beneficial interest.
- [31] Ms. Eddy's case is that sometime around 1978 she and the deceased started to discuss living together. They therefore made the decision to purchase the property at Fort Thomas Road. The purchase was financed partly with the deceased's own funds and partly through a mortgage. At the time, there was one small wooden structure on the land which they decided to demolish and replace with a three level building. The plan was that there would be a business on the ground floor, a convenience store on the second level and their dwelling house on the third level. The idea was that the building should not only house them but generate earnings on which they would live.
- [32] Ms. Eddy claims to have contributed to the construction of the building. She said she would assist in joining pieces of board by nailing them together; she would carry mortar around the site and

³ [2005] Fam 211

remove rubble; she brought tools for the deceased; she made suggestions as to how the building could be modified; some of which were acceded to by the deceased. She did all of this because he had assured her that this was “we thing,” by which she understood him to mean that the land and building would be for their joint benefit. So much did the deceased wish her to work alongside him in the construction of the building that he “terminated” her employment with her employer.

[33] By this evidence, Ms. Eddy seeks to convey that there was an express agreement that she and the deceased should have a beneficial interest in the property.

[34] The defendant contends that this property was acquired and constructed by the deceased before he entered into a relationship with the deceased and that she played no part in its acquisition or construction.

[35] In resolving this issue, I have had regard to the fact that in her affidavit in support of the fixed date claim, Ms. Eddy’s case seemed clearly to be that the property had been acquired by the deceased prior to their relationship but that she subsequently contributed to its improvement. This differs from her witness statement in which she says that in or about 1978 she and the deceased started to discuss living together and, therefore, made the decision to purchase the property at Fort Thomas Road.

[36] Under cross-examination on the subject of when the Fort Thomas Road property was acquired, Ms. Eddy stated that the deceased “didn’t have it when both of us got in. He hadn’t bought it yet.” This evidence is meant to convey that the deceased only purchased the Fort Thomas Property after they were involved in a relationship which would seem to be consistent with her witness statement. However, Mrs. Jenkins referred her to paragraph 14 of her affidavit in support of the fixed date claim in which she had averred as follows

“Apart from the Fort Thomas property (subject to the improvements and construction of the convenience store) all other properties and assets were acquired by the defendant (sic) during the time of our relationship and by using for the most part the funds contained within the joint account. These are all registered in the deceased’s name.”

[37] The logical interpretation of this is that the Fort Thomas Road Property was not acquired during the relationship between the claimant and the defendant but prior to the commencement of their relationship. Ms. Eddy was asked whether this was untrue. She maintained that it was true. In my

view, the contents of paragraph 14 of her affidavit and her evidence in chief and under cross-examination cannot be reconciled. Her affidavit evidence is to the clear effect that the Fort Thomas Road property was acquired before their relationship, but for the improvements and construction of the convenience store.

[38] The evidence of the defendant and his witnesses on this subject is that that property was acquired and completed by the deceased before his relationship with Ms. Eddy commenced. The evidence of the deceased's son, as contained in his witness statement, is that he resided with his father at the family home until the middle of the 1990's when his father moved into the three storey building which had been completed some years before and by which time a restaurant and grocery were already in operation on the ground floor and second floor respectively. Sometime after the deceased moved into the Fort Thomas Road property, Ms. Eddy moved in and has resided there to the present.

[39] Ms. Eddy further makes the odd claim that she and the deceased were living as husband and wife prior to moving into the Fort Thomas Property, even though she agrees that he was living at his family home on the same Fort Thomas Road while she was renting an apartment with her brothers on Malone Avenue. I view her evidence under cross-examination as an attempt to bolster her claim. I find as a fact that she moved into the property after it had been acquired and constructed. I accept the defendant's evidence that the deceased did not move into that property until mid-1990's. This means that Ms. Eddy could not have been residing there with him from 1982.

Express agreement as to beneficial interest

[40] Ms. Eddy claims to have contributed to the construction of the building. She said she would assist in joining pieces of board by nailing them together; she would carry mortar around the site and remove rubble; she bought tools for the deceased; she made suggestions as to how the building could be modified; some of which were acceded to by the deceased. She did all of this because he had assured her that this was "we thing," by which she understood him to mean that the land and building would be for their joint benefit. So much did the deceased wish her to work alongside him in the construction of the building that he "terminated" her employment with her employer.

[41] When pressed on these assertions under cross-examination, glaring areas of inconsistency and contradictions revealed themselves. A few examples should suffice. Whereas Ms. Eddy had

claimed in her witness statement that the deceased had terminated her employment so she could work alongside him during construction, under cross-examination she testified:

“I didn’t stop working with Mr. Byron during the construction of the building. The building was already finished when I stopped working for Mr. Byron”.

[42] When confronted with her witness statement, she conceded that it was not true that the deceased terminated her employment with Mr. Byron in order for her to work alongside him on the construction of the building. Against this, I weigh the defendant’s case that the claimant played no part in the construction of the property and started to work at the convenience store on the property after it had been completed. I find this to be true.

[43] Ms. Eddy also makes the odd claim under cross-examination that she also contributed to the construction of the building, when she could afford it from her meagre earnings, by sometimes donating about two or three bags of cement after the building had been completed. When pressed on this oddity, she then said it was before the building was completed. I am satisfied that the claimant made no contribution to the construction of the Fort Thomas Road property.

[44] I disbelieve her evidence that she and the deceased discussed the acquisition of the property. I disbelieve her evidence that during its construction he had said to her that it is “we thing.” I find that there was no express agreement that the beneficial interest would be shared.

Course of conduct

[45] Nonetheless, in the absence of express agreement, I must consider whether such a common intention can be inferred from the course of dealing between the parties.

[46] There is no dispute that Ms. Eddy and the deceased shared an amorous relation which I find commenced in or about 1978. She commenced cohabiting with him in the mid 1990s, sometime after he had moved into that property. I accept her evidence that she cooked, washed, cleaned and generally cared for him. Her granddaughter moved into the home she shared with the deceased at age six. Over time, the deceased even constructed additional structures on the land to accommodate her children and grandchildren. Her daughter and her son live in one; Ms. Eddy’s grandson lives in another. I also accept that she was responsible for running the convenience store located on the second floor of the property and that its daily management, which included

ordering stock and managing its finances, fell to her. She contributed to its enhancement over the years by securing two loans totaling \$17, 920.00 from the Development Bank in order to procure larger cold storage facilities and stock. She has produced loan statements to support her assertion in this regard (Exhibit **RPE2**). While the defense sought to suggest that there is no evidence to prove that the funds were applied for these purposes, I see no basis for entertaining doubt about this.

[47] I further find that the parties arranged a joint account into which the proceeds of the convenience store were deposited. It was agreed by the defendant that the deceased sometimes supplemented this with deposits made from his personal account. The funds from that joint account were used to meet the expenses of the store and household expenses and the support of Ms. Eddy's children. To this extent, there was some limited pooling of resources as it relates to the upkeep of the convenience store and the household generally. When the store became unprofitable and was closed, the space was converted to living quarters for Ms. Eddy's family. When the deceased fell ill and required medical attention overseas, Ms. Eddy accompanied him. At the time of his death on 4th July, 2018, Ms. Eddy had been cohabiting with him for approximately 23 years. These matters give rise to the inference that there was a common intention that the beneficial interest in the Fort Thomas Road property would be shared.

[48] The next question is whether Ms. Eddy has proven that she acted to her detriment on the basis of the inferred common intention that in so acting she would acquire a beneficial interest. The question is: what quality of conduct or degree of detriment suffices? Sir Nicholas Browne-Wilkinson VC in **Grant v Edwards and Another**⁴ provides an answer:

“As at present advised, once it has been shown that there was a common intention that the claimant should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties, is in my judgment, sufficient detriment to qualify.”
(page 667,B)

[49] Nourse L.J. answered that question by saying:

“In my judgment it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in their home.” (Page 648, e-f)

⁴ [1986] 1 Ch 638

- [50] It seems, therefore, that any act done to her detriment by Ms. Eddy relating to the joint lives of the deceased and herself would qualify as sufficient detriment if she could not reasonably have been expected to embark on it unless she was to have an interest in the property.
- [51] In this regard, Ms. Eddy incurred liability for two loans in order to enhance the facilities of the convenience store which formed part of the property comprising the family home. She invested over 23 years in looking after the household and the deceased as well. These acts are sufficient to qualify as detrimental reliance as I do not believe that she could reasonably have been expected to incur such liability unless acting on the common intention that she was to have an interest in the property. I therefore find that Ms. Eddy did act to her detriment on the faith of the common intention between her and the deceased that she was to have a beneficial interest in the Fort Thomas Road property.
- [52] Having crossed the hurdle of establishing a beneficial interest, Ms. Eddy is required to establish exactly what that share is. The whole course of dealing between her and the deceased is relevant to the determination of this issue. Having reviewed her contributions as outlined above, and based on the conduct of the parties I infer that it was the common intention that each should have a beneficial interest of 50% in this property. I assess this as fair and just.

The joint account as source of funds for other properties

- [53] Ms. Eddy bases her claim to a share in the beneficial interest in the Camps property, the Pine Gardens property and the vehicle on two bases. First, she claims that the convenience store was once quite profitable and that the profits from the store were deposited into the RBC Joint Account and were also used to acquire the other assets of the deceased. She exhibited a bank statement for the period 30 July 2016 to October 2016 (Exhibit “RPE1”). This statement shows a maximum balance during this period of \$4, 408.87. It is noteworthy that this statement reflects a period after the store had been closed for about two years and sheds no light on its profitability during its operation. This exhibit fails woefully to make the claimant’s case that this account was the source of funding for the deceased’s subsequent acquisition of the disputed properties.
- [54] Under cross-examination, Ms. Eddy was asked whether she didn’t think she should have presented the court with a bank statement showing substantial amounts in the joint account. The claimant replied no; even though she said she knew that the banks keep records for up to ten

years. She didn't think that she could have gone to the bank and obtained whatever records were available. She said she expected the Court to just take her word for it because she didn't know that matters would reach this stage. It is trite that she who alleges must prove.

[55] But further to this is the claimant's own admission under cross-examination that:

"Sonny (the deceased) was a well-known building contractor. He made quite a lot of money from that profession. Those funds go into his business account." (This is not a reference to the joint account),

[56] It seems to me that while the deceased made some deposits to the joint account, the bulk of his funds, derived from his extensive construction ventures, were stored in his personal account. I am completely unpersuaded that the convenience store generated the kind of funds that would be necessary to finance the deceased's acquisitions. The evidence, for example, is that the Camps property cost in excess of \$60, 000.00 in or about 2003. In the absence of cogent evidence of substantial earnings from the convenience store, it is inherently more likely that the source of funding derived from the deceased's earnings as a contractor and not from the proceeds of a community convenience store. I might add that no evidence whatsoever was given as to the average earnings of this convenience store over the life of its existence.

[57] On the contrary, the defendant's evidence is that the store experienced good and bad times and had to be closed on a few occasions before eventually going out of business permanently. Ms. Eddy's evidence confirms that it was closed in 2014 because it was unprofitable. The space has since been converted to living quarters for her family.

[58] Ms. Eddy has not established that the convenience store was the profitable venture and source of funding, whether directly or indirectly, for the acquisition of any of the deceased's other properties as she claims.

[59] Ms. Eddy also claims to have made direct financial contributions in the form of sums of money received by her from her father which were deposited into the joint account for the common use and benefit of the deceased and herself, including for the purpose of acquiring the other properties. This claim will be assessed below in dealing with the other properties.

The Camps Property

[60] With specific reference to the property at Lot No. 5 Camps Commercial Development, Ms. Eddy stated in her witness statement that the deceased again indicated to her that it was 'we thing'. The purchase price was paid from the joint account and from the deceased's personal account. In or about 2015, Romaine Belgrove, approached them in relation to leasing the land at Camps. The arrangement was that Romaine would pay her \$1000.00 per month to use the land, and, since the first month of the agreement, she has been collecting the money for rent and depositing it into the joint bank account which she said was accepted to be her income as she was no longer earning money in the store.

[61] Ms. Eddy was cross-examined about her claim that the deceased had told her that the Camps property was for them both. She said that he had said this because she had contributed money sent to her by her father and the deceased had contributed the balance towards paying for the property. Initially, she said she could not remember the exact sum but claimed it was "a couple thousands well". Later on, she claimed her father had sent \$15, 000.00 to her through the St. Kitts, Nevis, Anguilla National Bank. She collected it but did not deposit it into any account but gave the cash to the deceased to purchase the land. She said she didn't give him when he was purchasing the land in 2004 but sometime after when he was about to make the final payment on the land which she said was in 2010.

[62] Ms. Eddy was thoroughly discredited in cross-examination on the alleged financial contribution to the acquisition of the Camps Property sourced from monies sent by her father. To put matters in perspective, it is necessary to go back to her witness statement. At paragraph 55 she claims that the Camps property was paid for by monies from the joint account and from the deceased's personal account. This was the full extent of her account of the acquisition of the Camps property. The only reference to receiving funds from her father is at paragraph 31 where she stated:

"In fact, on my father's passing in 2004, I deposited my inheritance of \$15,000.00 of East Caribbean Currency into the account for it to be used for our joint benefit."

[63] It was only under cross-examination that she mentioned for the first time that she made a cash contribution to pay off for the property. But even this account was riddled with inconsistencies when further cross-examined. Whereas in her witness statement she had claimed that the \$15,000.00

represented her inheritance, under cross-examination she resiled from this saying that the \$15,000.00 was not the inheritance but monies her father had sent her while alive. But this position shifted again when she claimed that she had in fact received two sets of money from her father. She stated:

“The first set of money was sent by my father while he was alive. The second set was sent after he died. My brothers sent it. One set was the \$15,000 *inheritance*. This was sent by my brothers.”

[64] So it seems that the sum of \$15,000 is once again characterized as the inheritance. But what became of the money from her father is also a source of inconsistency. Ms. Eddy’s first account in her witness statement was that it was deposited into the joint account for their joint benefit. Under cross-examination she first said she had collected it and given it to the deceased to pay for the Camps property. She later denied saying this, even though it’s on the record. But more was yet to come. When it was put to her under further cross-examination that she had told the court that she had collected the \$15, 000.00 and given it to the deceased, MS. Eddy replied:

“No. I collected it and had it somewhere. I gave it to somebody to hold because it was a good set of money.”

Q: So when you said the \$15,000 went into the joint account that is not true?

A: No. It’s not true. I asked one of my family to hold the \$15,000 for me.”

[65] In another twist, Ms. Eddy went on to claim under cross-examination that this money was held by a family member for six years before she gave it to the deceased to purchase the Pine Gardens property. I will deal with this property later in this judgment but the point is made here to demonstrate the different stories Ms. Eddy has rendered about this sum of money.

[66] Yet later, Ms. Eddy was to testify that this \$15,000 inheritance was not deposited into the joint account as she had said in her witness statement but deployed towards stocking the convenience store. The exchange was as follows:

“I got an inheritance of \$15,000.00. These funds were not deposited into the joint account. That money went towards goods for the shop from Ram’s, O.D Brisbane and different places; so I didn’t deposit it.

Q: According to that paragraph [31of witness statement] the \$15,000 was deposited into the joint account?

A: No it was not.

Q: So para 31 is not true and correct?

A: No. This is not true."

- [67] There is simply no consistency in the accounts given by Ms. Eddy in relation to this sum of money.
- [68] As to the first set of money said to have been received before her father's death in 2004, Ms. Eddy testified that that was about £12,000.00 which the deceased added to his personal account. It was from funds in his personal account that he paid for the Camps property. Several observations are made about this evidence. First, it was never pleaded nor foreshadowed in her witness statement that she had received £12,000.00 from her father at all, far less that the deceased deposited it into his personal account and used it to pay for the Camps property. When confronted with this, her explanation was that sometimes things slip her. I find it very difficult to believe that such a substantial contribution to the acquisition of the Camps property could have slipped Ms. Eddy. The second observation about this belated account is that it contradicts her evidence in chief that the purchase was funded from the joint account and the deceased's personal account.
- [69] I consider this evidence relating to the contribution of £12,000.00 to the acquisition of the Camps property to be a complete fabrication.
- [70] These inconsistencies serve only to undermine and erode confidence in Ms. Eddy's attempt to persuade the court that there was an express agreement that she would have a beneficial interest in the Camps property and, that in reliance on this, she had made a direct financial contribution to its acquisition. I reject these assertions completely.
- [71] There is no other evidence as it relates to their course of dealing in relation to the Camps property to give rise to the inference that there was a common intention that the beneficial interest in this property should be shared. The only role Ms. Eddy played in relation to that property was to collect the rent. That does not suffice to give rise to any such inference.
- [72] By contrast, the evidence establishes that the Camps property was purchased for just over \$60,000.00 and comprised two lots of land together measuring 15, 665 square feet. It was

registered initially in the names of the deceased and his brother and from 2009 in the deceased's sole name. It was paid for by installments. These receipts were exhibited by Ms. Eddy and clearly show that they were paid on behalf of the deceased and his brother. If as Ms. Eddy claims the deceased removed his brother's name from the Certificate of Title because he was not contributing towards payment for the property and had accepted her financial contribution with the assurance that it would be theirs, it is curious that he never added her name to the Certificate of Title. This is because there was never a common intention that she should have a beneficial interest in that property.

The Pine Gardens Property

- [73] Ms. Eddy's evidence, as contained in her witness statement, was that the deceased told her that he was going to purchase that lot of land in order to build her a property from which she could derive additional rental income. According to her witness statement, this property was purchased partly from monies derived from the sale of a property which the deceased owned in St. Maarten and partly from funds from their joint account. Ms. Eddy therefore seeks to establish a beneficial interest by asserting that there was an express agreement that this property was acquired largely for her benefit and that she contributed financially to its acquisition through monies from the joint account.
- [74] I note that no evidence has been given of how much was taken from the joint account for this purpose. I have already found that there is no evidence that the joint account was sufficiently funded to be able to enable the acquisition of any property.
- [75] Under cross-examination, Ms. Eddy could not say when the property had been purchased nor could she recall the purchase price. However, in complete contradiction to her witness statement, she stated that the purchase price was derived from a contribution of \$15,000 which she had received from her father and the rest from the deceased's personal account. I have previously set out at paragraphs 61 - 66 above the exchanges that ensued under cross-examination on this assertion. This is yet another invocation of the sum of \$15, 000.00 which seems to have served many purposes. In the case of this property, Ms. Eddy testified that she gave the deceased about \$7,000.00 out of the \$15,000.00 towards its purchase. When reminded that in her witness statement at paragraph 59 she had said that the majority of the funds for the purchase of the

property had come from the proceeds of sale of a property in St. Maarten owned by the deceased and the rest from the joint account, her response was:

A: "I now say no money came from the joint account. I took it (the \$15, 000.00) from somebody who was holding it for me.

Q: So what is stated in paragraph 59 is not true?

A: I had it as that as we had the joint account together; I probably got mixed up."

[76] Given the state of the evidence on this subject, I am quite unable to accept Ms. Eddy's account as true. I do not believe that the deceased told her that he was going to purchase that lot of land in order to build her a property from which she could derive additional rental income and I do not believe that she contributed any money towards its acquisition. There is no other evidence regarding the parties course of dealing with that property that gives rise to the inference that there was a common intention that she should have a beneficial interest in that property. I find that she has no such interest.

The 1997 Ford Range Pickup Truck

[77] Ms. Eddy's claim to share in the beneficial ownership of this vehicle derives from her assertion that it was paid for from monies from the joint bank account. The sum total of Ms. Eddy's evidence in chief on this subject is comprises two sentences at paragraph 38 of her witness statement:

"Sonny purchased a motor vehicle, the Ford pick-up truck to assist with his construction business. The payments were made from our joint accounts."

[78] Under cross-examination she admitted that the deceased had bought a car for her which was registered in her name only. As to the pickup truck, she testified:

"He also purchased a pickup truck for himself. That was for his construction business. He didn't purchase it from funds from construction. He had a pickup before. He sold that and used the money to buy the new one, along with some money he had from St. Maarten. I think he bought the pickup in 1976 or 1977. At that time he had not sold his properties in St. Maarten. Those funds from St. Maarten were in another account the deceased had. I am speaking about his personal account at Royal Bank."

[79] When reminded of what she had said about this in her witness statement, she stated:

“I can’t recall saying that payment for the pickup truck was made from the joint account.”

[80] This exchange illustrates another instance where Ms. Eddy was forced to concede that the joint account was not the source of funds for property acquisitions as she claimed in her witness statement. Pulling the pieces together, it is quite evident that these large property acquisitions were in fact funded from the deceased’s personal funds/account derived either from his construction business or the proceeds of sale from various properties which he owned in St. Maarten. This is precisely the defendant’s case.

[81] On the evidence, Ms. Eddy made no contribution to the acquisition of this vehicle. Indeed, the deceased purchased a vehicle specifically for her which is registered in her sole name. He purchased the Ford pickup for his own use and registered it in his sole name. These facts negate any suggestion that the parties intended joint ownership.

[82] In the absence of evidence of an express agreement between the deceased and Ms. Eddy that they should share the beneficial title, on which she acted to her detriment on the basis of that common intention, or evidence that the parties have conducted themselves in such a way as to show that they intended joint ownership of the vehicle, I am unable to see that Ms. Eddy has any beneficial interest in that vehicle.

[83] There were some other claims made by Ms. Eddy that I should briefly mention since these influenced my assessment of her overall credibility. At paragraphs 60 and 61 of her witness statement, she claimed that since the deceased’s death she is financially dependent on her children since much of his medical expenses were paid from their joint account and this has left her with a very limited amount of resources. Under cross-examination she distanced herself from this position as seen in the following exchanges when she was referred to those paragraphs in her witness statement:

“Q: That is not true?

A: I did not say that. I do not recall. It’s not true that much of Sonny’s medical expenses were paid from our joint account. Sonny paid for his medical expenses out of his personal account.”

[84] Yet again, it seems the joint account was not the pot of gold she first professed it to be.

[85] Another issue on which the claimant's evidence is threadbare is her claim that she played an important role in the construction business by preparing the wage slips for the deceased's employees and accessing his personal business account for the purpose of paying the workers and keeping track of his accounting. These bare assertions are unsupported by any documentary evidence such as accounts records. Given the numerous inconsistencies and contradictions that pervade her evidence and the negative impact this has had on my assessment of her credibility, I am unable to accept this evidence as true.

Conclusion

[86] Having regard to the legal principles discussed and the facts as I have found them, it is hereby ordered and declared:

1. The claimant is entitled to a 50% beneficial share in the properties situated at Fort Thomas Road, Basseterre, in the island of Saint Christopher namely;
 - (a) Land ID #3333 measuring 614 square feet with building thereon;
 - (b) Land ID #3334 measuring 683.7 square feet with building thereon;
 - (c) Land ID #3332 measuring 3261 square feet with a 3-Storey building thereon; and
 - (d) Land ID # 3335 measuring 589 square feet with building thereon.
2. The claimant is not entitled to any beneficial share in Lot No. 5 at Camps Commercial Development in the parish of St. George, St. Kitts.
3. The claimant is not entitled to any beneficial interest in the land with building thereon situated at Lot No. 72 at Pine Gardens Housing Development in the parish of St. George's, St. Kitts.
4. The claimant is not entitled to any beneficial interest in the 1997 Ford Ranger Pick-Up Truck, Registration number P6320.

[87] Both parties have enjoyed a measure of success on the claim. Accordingly, I order that the parties bear their own costs.

Trevor M. Ward QC
High Court Judge

By the Court

Registrar