

IN THE SUPREME COURT OF GRENADA

**AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2017/0389

BETWEEN:

JOAN LEWIS

Claimant

and

OVIN MERRYMAN

Defendant

Appearances:

Mrs. Celia Edwards QC with her Ms. Celene Edwards for the Claimant
Ms. Hazel Hopkin for the Defendant

2021: June 10;
September 10.

JUDGMENT

- [1] **GLASGOW, J.:** The claimant, Joan Lewis, (Ms. Lewis) in her fixed date claim seeks an order against the Defendant, Ovin Merryman (Mr. Merryman) for possession of property with dwelling house thereon situate at Resource in the parish of Saint Mark in the State of Grenada (the property) and other relief, including mesne profits and costs. Conversely, Mr. Merryman counterclaims for a declaration that he is entitled to a 75% share or more of the property and an order that the property be valued and he be permitted to purchase Ms. Lewis' share in the property, among other reliefs. Mr. Merryman no longer resides in the property and therefore the issue of possession is no longer in contention. The issue to be determined is whether there was a common intention between the parties to share the property.

Background

- [2] In or around the year 1998, the parties became involved in a long term intimate relationship. This relationship between the parties bore one daughter, who is now an adult. However, Ms. Lewis has two other children of her own prior to the commencement of the relationship. The parties were never married, but they, together with the children lived at the property at Resource, Saint Mark comprising a wooden house for several years. Prior to the parties' relationship, Ms. Lewis purchased the property from William Lawrence for \$45,000.00. She presents a deed of conveyance dated 5th May 1993. The property was mortgaged under a deed of mortgage dated 4th May 1993 between Ms. Lewis and the National Commercial Bank of Grenada. The principal sum of the mortgage at the date of its execution was \$35,000.00.
- [3] After the passage of Hurricane Ivan in 2004, the house was substantially damaged. On 5th July 2005, Ms. Lewis and Mr. Merryman executed a joint promissory note in favour of the Housing Authority of Grenada (the Housing Authority) acknowledging the receipt of the sum of \$40,000.00 for building materials. The parties agreed to repay the sum to the Housing Authority by way of monthly instalments of \$500.00 together with interest at a rate of 3% per annum. Thereafter, the dwelling house was constructed and comprises a single-storey two bedroom one bathroom concrete building using materials that the parties obtained from the Housing Authority. Mr. Merryman, who is a building contractor, lent his assistance and his resources to the project. Under cross-examination at trial, Ms. Lewis did not dispute that Mr. Merryman contributed to the development of the land and construction of the dwelling house thereon.

Ms. Lewis' Case

- [4] In summary, Ms. Lewis' contentions are:
- (1) Ms. Lewis avers that she is currently employed as a clerical assistant/supervisor at the St. Mark branch of the road works office, Ministry of Works and Infrastructure.

- (2) In or about 1985, she began residing in a chattel house situate at Resource, St. Mark which is the subject matter of these proceedings. She claims that she has lived there together with her children for many years. Thereafter, the former owner of the property, William Lawrence, offered to sell the property together with wooden house thereon to her which she agreed to purchase for the price of \$45,000.00. Ms. Lewis exhibits a copy of an Indenture of Conveyance which conveyed the property to her.
- (3) In or about 1997, Ms. Lewis avers that she began a relationship with Mr. Merryman and in 1998 she became pregnant and bore a daughter which is their only child together. This relationship continued as Mr. Merryman began sleeping over more often. However, she contends that all of the responsibilities of the home remained hers.
- (4) During the relationship Ms. Lewis avers that she worked 3 jobs to pay for the mortgage. These jobs included one with the Box Shop at Grenville, St. Andrew, the second at a Call Centre and the third was at Mr. Merryman's business.
- (5) Ms. Lewis avers that Mr. Merryman operates a business as a contractor. His business received small contracts for road works within the community and from the government and Nawasa, among others. Her responsibility in the business was to prepare all of the invoices and pay schedules for his workers. She says the pay was "next to nothing", but she continued to work in the business given her relationship with Mr. Merryman.
- (6) In relation to the promissory note at the Housing Authority, Ms. Lewis avers that while Mr. Merryman's name appears on it, he was merely included as a guarantor due to the amount being borrowed. To date, Mr. Merryman has failed and/or refused to make any contribution to the loan and this action speaks to any lack of an intention for him to have an interest in the property.
- (7) Ms. Lewis is of the view that Mr. Merryman as her then boyfriend and father of her child was merely assisting her out of love and affection and she did not intend for him to have any interest in the property. Ms. Lewis says that she expected him to help her financially, but not with a view to being able to claim an interest in her property. Had she known that it was Mr. Merryman's

expectation to benefit from an interest in the property, she would have made him stand some of the liabilities that came with it.

- (8) After the construction of the concrete structure, Mr. Merryman resided in the property and failed or refused to contribute to the home. The loan with the Housing Authority also continued to be her responsibility as was the case during their relationship.
- (9) Ms. Lewis alleges that there was a breakdown in the relationship which forced her to seek alternative accommodation. Considering Mr. Merryman resided in the property Ms. Lewis offered him to purchase the same. However, since he refused to purchase, he was requested to vacate the property by way of letter dated 25th September 2015.
- (10) Ms. Lewis states that Mr. Merryman made no contribution to any mortgage, bill or maintenance of the property. Ms. Lewis repeats that there was never any expressed or implied intention that Mr. Merryman would have an interest in the property. She claims that he certainly did not behave as someone who had any obligations towards the property.

Mr. Merryman's case

[5] Mr. Ovin Merryman contends that:

- (1) He is a building contractor by profession and is the owner of "Merryman Bobcat and Trucking Service".
- (2) He met Ms. Lewis met in or around the year 1998. At that time, she was living in a wooden house at Resource, St. Mark. Subsequently after they met, they began a romantic relationship and lived together in the property as husband and wife for a few years with their daughter.
- (3) Mr. Merryman avers that when he met Ms. Lewis the land on which the wooden house was built, it was mortgaged to the National Commercial Bank, now Republic Bank Grenada Ltd. Mr. Merryman states that Ms. Lewis serviced the mortgage when their relationship began and he assisted her financially in making the payments.

- (4) Mr. Merryman says that although the title deed is in Ms. Lewis' sole name, it was always understood and agreed that she would add his name to the deed as the parties considered themselves as one. The house was treated as their home. At no time was he treated as a mere gratuitous guest. Mr. Merryman states that he maintained the house as though it was his own. He regarded Ms. Lewis as his wife and they treated the house and land as their family home.
- (5) After the passage of Hurricane Ivan in 2004, Mr. Merryman and Ms. Lewis obtained assistance from the Housing Authority in the sum of \$40,000.00 to begin construction of their family home. He states that both of their names appear on the promissory note since from the time that he began residing with Ms. Lewis he contributed to the family home and they have grown together as a family.
- (6) Mr. Merryman states that his assistance to the construction of the house was not only financial because of his profession, his resources such as his tools, labour and trucks were used during the construction of the home. He states that he hired and paid for some of the equipment and personally paid the workers for labour that they provided. The house is a one-storey concrete building consisting of two bedrooms, one bathroom, a kitchen and living area with the upper floor being incomplete.
- (7) Mr. Merryman contends that since he met Ms. Lewis she was never fully employed. She was never financially stable and sometimes was involved in the "debushing" programme and occasionally sold barbeque chicken on the side of the road. He contends that he was the sole breadwinner for the entire family during the currency of their relationship. He was responsible for all the furnishings when time came for them to move into their home.
- (8) Mr. Merryman says that there was always a common intention and understanding that the property was jointly owned by them and that Ms. Lewis would add his name to the title. He contends that he would not have injected so much of his financial resources into the property without expecting that the property would eventually be transferred to in their joint names.
- (9) The relationship between the parties broke down in or about 2015. However, he continued to reside at the property because it was his understanding that because of his contribution both

to the mortgage and to the upkeep of the house that he would enjoy a certain percentage of ownership therein. As a result of the breakdown of the relationship, Ms. Lewis decided to renege on her word and make light of his contributions during the currency of their relationship.

- (10) Therefore, Mr. Merryman believes that since he carried the bulk of the financial strain for the construction and maintenance of the property and family that he should be given 75% of the interest in the property and that he should be permitted to purchase Ms. Lewis' 25% share therein.

Mr. Merryman's witnesses

- [6] Mr. Anthony Simon states that he is a building contractor and says that he assisted Mr. Merryman in the construction of a house in Resource. Mr. Simon says that the property comprised an old wooden structure which was partially demolished. Mr. Merryman paid him for the work he completed on the roof and building. During the construction, Mr. Simon stated that Mr. Merryman used his trucking business to purchase materials for the house and would drop them off at the site. He also states that Ms. Lewis would sometimes cook for the workmen and serve them with a cold drink.
- [7] Mr. Joshua Gurrie also gave evidence on behalf of Mr. Merryman and says that he is an electrician by profession. Mr. Gurrie states that Mr. Merryman approached him concerning an issue with the temporary Grenlec connection at the property. Mr. Gurrie says that he was the one who did the transfer from a temporary connection to a permanent connection for the house at Resource since it was Grenlec's requirement after construction of the house. His work included installing electrical outlets, running some electrical wires and installing a meter base. Mr. Gurrie avers that all of his instructions came from Mr. Merryman and he was paid by him. He also observed that Mr. Merryman purchased materials from "Kalico Supermarket and Electrical Supplies" for the electrical work he was retained to do.

Issue

- [8] In light of the above facts and evidence, the court is to determine whether there was a common intention to share the property and if so, the extent of each interest.

The Law

The approach of the courts in claims which centre on beneficial ownership in property

- [9] In **Stack v Dowden**¹ Baroness Hale (as she then was) elucidated:

“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”²

- [10] At para. 61 of **Stack**, Baroness Hale stated:

Oxley v Hiscock was, of course, a different case from this. The property had been conveyed into the sole name of one of the cohabitants. The claimant had first to surmount the hurdle of showing that she had any beneficial interest at all, before showing exactly what that interest was. The first could readily be inferred from the fact that each party had made some kind of financial contribution towards the purchase. As to the second, Chadwick LJ said this (at [69]):

‘. . . 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 (at least in this court and below) 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.’ (Underlining supplied)

Discussion

¹ [2007] 2 All ER 929

² **Stack v Dowden** [2007] 2 All ER 929 at para. 56

Whether there was a common intention to share the property

Claimant's closing submissions on common intention

- [11] Counsel for Ms. Lewis submits that considering that the property in this matter is registered in the name of Ms. Lewis, the applicable doctrine of law to be examined is that of constructive trust. Counsel relies on learning from the authorities of **Gissing v Gissing**³; **Stack v Dowden**⁴; **Abbott v Abbott**⁵; and **Lloyds Bank Plc v Rosset**⁶. From the case law, it is apparent that an essential element of the doctrine is that the court must be satisfied that it was the intention of both parties that the party in whose name the property is not registered is to gain a beneficial interest. Counsel argues that it cannot be enough that one party intended to obtain a beneficial interest in the legal owner's property.
- [12] The pertinent question is whether Ms. Lewis led Mr. Merryman to believe that he would be acquiring a beneficial interest in the property. Counsel invites the court to answer that question in the negative for the following reasons:
- (1) Mr. Merryman in his evidence stated that on more than one occasion even before the construction of the concrete structure, he requested Ms. Lewis to have his name added to the title of the property as a joint owner.
 - (2) Mr. Merryman avers that Ms. Lewis never took any steps to have his name added. Mr. Merryman also indicated to her that he would not carry out further works on the building if his request to have his name added to the deed was refused.
- [13] Counsel submits that there can be no clearer indication that a legal owner has no intention of a party gaining a beneficial interest in their property than outright refusing or failing to add their name to the property after being requested to do so on numerous occasions. Any reasonable man would

³ [1970] 2 All ER 780 per Lord Diplock at page 790

⁴ [2007] 2 All ER 929 per Baroness Hale at para. 60

⁵ (2007) 70 WIR 183 per Baroness Hale at para. 6

⁶ [1990] 2 WLR 867 per Lord Bridge at page 877

conclude that there was no beneficial interest to be obtained in the circumstances. Therefore, if Mr. Merryman still chose to conduct work on the property it would have been at his own risk.

- [14] Additionally, counsel submits that there was no clear “shared intention” as explained in **Stack v Dowden**. It was quite simply the case that as is the Caribbean culture, these parties shared a relationship and a child together. It is with this culture in mind that Mr. Merryman undertook certain works and made contributions so as to provide shelter for his significant other and child. The benefit to be derived was for the time the relationship lasted.

Defendant’s closing submissions on common intention

- [15] Counsel for Mr. Merryman submits that Mr. Merryman has accepted that at the start of his relationship with Ms. Lewis, she had already purchased the lot of land together with chattel house thereon. It is Mr. Merryman’s case that while he resided in the chattel house, he contributed to the payment of the mortgage with the National Commercial Bank, now Republic Bank. Counsel contends that under cross-examination at the trial it became evident that Ms. Lewis was not financially stable and relied on others for assistance. Ms. Lewis testified that the \$10,000.00 out of the \$45,000.00 purchase price was obtained from her brother. Further, her evidence was that her salary was unstable and was unable to give an approximate salary even when pressed for one.
- [16] Counsel submits that it has always been Mr. Merryman’s case that he contributed to the bills and expenses of the household. This was denied by Ms. Lewis. However, under cross-examination at trial counsel states that Ms. Lewis recanted her evidence and testified that Mr. Merryman did contribute toward electricity and phone bills and food. Therefore, Ms. Lewis’ evidence at paragraph 13 of her witness statement that “all responsibilities of the home remained her responsibility” is inaccurate.
- [17] With respect to the development of the land, Ms. Lewis accepted that Mr. Merryman contributed toward improving the land. Counsel urges the court to consider that notwithstanding Ms. Lewis did obtain a mortgage for the purchase of the land with chattel house thereon, Mr. Merryman did contribute to the repayment of the mortgage. Therefore, the court is urged to determine that the parties did contribute unequally towards the land.

- [18] Counsel states that at paragraph 3 of the reply and defence to the counterclaim, Ms. Lewis suggests that the chattel house was converted into a concrete house. However, under cross-examination, Ms. Lewis accepted that the chattel house was never converted to concrete and that the concrete building was entirely different from the chattel house. Counsel submits that Mr. Merryman's contribution to the construction of the concrete house was not only financial, but because of his profession, his resources, including tools, trucks and labour were utilized in the construction.
- [19] Counsel states that both parties have accepted that the monies from the Housing Authority loan was not disbursed in tranches, but the material used in the construction of the house was obtained from Prestige Building Supplies. Counsel avers that the total of the evidence before the court suggests that Mr. Merryman was the person who constructed the concrete house and furnished it. Ms. Lewis did not contribute to the actual construction of the concrete house whether financially or with labour.
- [20] Counsel refers the court to the evidence of Ms. Lewis in her witness statement⁷ where she contends that she was solely responsible for the financial obligations in the home. At trial, counsel points out that Ms. Lewis under cross-examination stated that the telephone and electricity bills are registered in Mr. Merryman's name. However, the cable bill is in her name. Therefore, counsel is of the view that it is Mr. Merryman who paid the utility bills, save and except the cable bill.
- [21] Counsel states that this is a case where the legal title to property is registered in Ms. Lewis' name only and Mr. Merryman asserts a beneficial interest in the same. Generally, equity follows the law so that the beneficial interest in land follows the legal interest and the onus is on the person who asserts that the beneficial interest is different from the legal interest to establish that this is indeed so⁸. This is an enquiry into the law of constructive trusts. In such an enquiry the Court looks to determine whether there existed between the parties a common intention that the beneficial interest in the land would be shared otherwise than as the legal interest⁹. Counsel refers the court to **Abbott v Abbott**¹⁰; our Court of Appeal in the case of **Edwards v Edwards**¹¹ and **Eves v Eves**¹².

⁷ Paragraphs 9,13,23,25,27-28 and 38.

⁸ *Stack v Dowden* [2007] 2 A.C. 432 at para 56.

⁹ *Oxley v Hiscock* [2004] 3 WLR 715

¹⁰ [2007] UKPC 53

¹¹ ANUHCVP2012/0040 or 18 [ITELR] at page 691

¹² [1975] 1 WLR 1338

- [22] Counsel for Mr. Merryman notes that there were express discussions between the parties in relation to Mr. Merryman's name being added to title deed of the property. It is Mr. Merryman's contention that he insisted that Ms. Lewis add his name to the property. The court is urged to conclude that in all the circumstances, there was an express agreement, arrangement or understanding between the parties that Mr. Merryman would share in the beneficial interest in the property.
- [23] With respect to the learning on implied or inferred intention, counsel refers the court to the case of **Lloyds Bank** at page 1119. Counsel relies on the facts below to show Mr. Merryman's contributions toward the property. In summary, she outlines that Mr. Merryman:
- (1) moved into the chattel house with Ms. Lewis and her children and contributed toward the payment of bills and the purchase of groceries;
 - (2) operated a shop/bar together with Ms. Lewis while they lived in the chattel house;
 - (3) invested the monies from the shop/bar into the financing of the household;
 - (4) took a joint loan together with Ms. Lewis to build the shop/bar;
 - (5) excavated the land converting the topography from an even slope to flat terrain that exists today;
 - (6) included Ms. Lewis as a signatory on his chequing account;
 - (7) managed and controlled the construction of the concrete house;
 - (8) expended considerable sums of money in the construction of the concrete house;
 - (9) alone paid the mortgage for the concrete house thereby saving Ms. Lewis money and freeing her up to look after the household and care for their child;
 - (10) paid the electricity and telephone bills for the concrete house;
 - (11) built a concrete roof with the intention of constructing a soundproof disco thereon; and
 - (12) singlehandedly furnished the house.
- [24] Counsel says that the above facts show a clear picture of the parties' dealings with each other, that is to say, that they operated jointly for the benefit of each other and their household. It is evident that Mr. Merryman contributed far more than Ms. Lewis. There is no explanation as to why Mr. Merryman would have been able to freely excavate the lot of land, construct the concrete house, obtain utilities in his own name, and make preparations for continued construction of a soundproof disco without opposition from Ms. Lewis. Therefore, it would be unequitable and unconscionable in the

circumstances for Ms. Lewis to insist on her strict legal rights in the face of Mr. Merryman's overwhelming contributions toward the property.

Analysis

- [25] The evidence in this case leads me to conclude and I do so find that Mr. Merryman and Ms. Lewis did hold discussions concerning Mr. Merryman's name being added to the title deed for the property. However, Mr. Merryman's name was never added to the title of the property. In essence, there was no express agreement or arrangement between the parties to share the property jointly. Accordingly, the core issue is before me is whether, having regard to the whole course of dealings of the parties including their contributions to the entire property, there existed a common intention that they both share an interest in the property. If so, what is the extent of each share?

Mr. Merryman's contributions to the development of the land and mortgage with NCB

- [26] Mr. Merryman's case is that although when he met Ms. Lewis she was still paying back the mortgage for the land with the National Commercial Bank (NCB), he assisted in completing those mortgage payments. Counsel for Ms. Lewis in her closing submissions stated that Mr. Merryman has woefully failed to provide proof that he contributed to the repayment of the mortgage with the NCB. Counsel for Mr. Merryman in her closing submissions argued that Ms. Lewis was not financially independent and relied on others for assistance. At trial and under cross-examination by Ms. Hopkin, Ms. Lewis admitted that she could not give an approximate amount of her average salary while working in the "Batik" clothing company which led me to conclude that, in all likelihood, Ms. Lewis was not financially stable at the time that she started a relationship with Mr. Merryman. Therefore, given Ms. Lewis' seeming impecuniosity at that time, Counsel for Mr. Merryman submits that the court can draw an inference that Mr. Merryman did assist in the payment of bills. However, apart from Mr. Merryman's assertions that he did pay those bills, he has not led any documentary evidence or otherwise before this court to prove that he made those payments.

- [27] As I have stated above, the picture painted by the evidence in this case leaves me with a picture that suggests that Ms. Lewis seemed to be in a position of limited financial resources. However, she appears to have been quite diligent in making whatever contributions that she could make to meet her obligations when she could afford to do so. The picture that emerges also reveals that Mr. Merryman earned more, particularly in his work as a contractor. I am equally satisfied that he did make substantial financial contributions to the discharge of the NCB mortgage and other financial obligations of the home. However, I must note that the parties have both failed to enlighten me as to the precise amount of their individual financial contributions. This is not surprising or incongruous on the facts as I see them. In this case I see two people who lived together and attempted to jointly build a life and a home without taxonomically delineating their separate contributions to the endeavour.
- [28] At trial and under cross-examination by Ms. Hopkin, Ms. Lewis testified that originally the land at Resource was slopping downwards to the river and was cultivated for agricultural purposes. When asked by counsel Ms. Hopkin who was responsible for changing the topography of the land, Ms. Lewis admitted that it was through Mr. Merryman's efforts. Further, Ms. Lewis admitted that the land was excavated and backfilled by Mr. Merryman which increased its value. However, Ms. Lewis stated that this development of the land was done without her knowledge or approval.
- [29] Considering Ms. Lewis' admission that Mr. Merryman increased the value of the land by excavating and backfilling which changed its topography, there can be little or no arguments remaining to dispute his significant investments in developing the land. While I note that Ms. Lewis says that this development was done without her knowledge, the evidence does not support her contention. More specifically, given her posture at trial that there was no intention to share the property and that it remains hers, I find it quite telling that she has not presented any evidence that at the time when significant changes were being made to the development of the land that she even protested or made a single objection to the substantial improvement works being conducted on the property by Mr. Merryman. I am therefore satisfied that such a major development to the land which generally involves the use of heavy equipment and labour was done with her full knowledge, approval and/or acquiescence.

Mr. Merryman's contributions to the Housing Authority loan

- [30] It is Ms. Lewis' case that although Mr. Merryman's name appears on the promissory note with the Housing Authority, he was *"merely included as a guarantor due to the amount being borrowed"*¹³. Contrastingly, Mr. Merryman states that both parties' names appear on the promissory note, *"since from the time that I began residing with Claimant I have contributed to the family home and we have grown together as a family"*¹⁴.
- [31] At trial and under cross-examination by Ms. Hopkin, counsel notes that Ms. Lewis admitted to Mr. Merryman making payments toward the loan with the Housing Authority. Ms. Lewis admitted that Mr. Merryman made payments of \$5,000.00, \$2,000.00, \$500.00 and \$15,000.00. Counsel for Ms. Lewis in her closing submissions submits that Mr. Merryman's contention that since he was the one contributing the loan that he should be entitled to a greater share in the property cannot be maintained. Ms. Edwards contends that the fact that Mr. Merryman made sporadic contributions to the loan over a 16 year period seems to be of no moment, since the debt is largely present.
- [32] I am satisfied that the obtaining of the loan was a joint effort. Mr. Merryman was not a mere guarantor but made contributions toward the liquidation of the loan with the Housing Authority with the intention of gaining a beneficial interest in the property.

Mr. Merryman's contributions to the construction of the concrete house

- [33] The facts undisputedly disclose that Ms. Lewis purchased the land together with wooden dwelling house thereon from William Lawrence on 5th May 1993 for the purchase price of \$45,000.00. A valuation report prepared by Barry's Engineering Company Limited dated 19th April 2019 on behalf of the parties reveals that the entire property is valued at \$240,990.00. The report indicates that the land is valued at \$58,710.00 and the building being valued at \$152,280.00 respectively. External works are valued at \$30,000.00. The valuation report exposes the significant improvement in the market value of the property since its purchase in 1993 by Ms. Lewis for \$45,000.00. Therefore, there can be no doubt that the entire property has increased in value over the years.

¹³ Paragraph 23 of the Witness Statement of Joan Lewis

¹⁴ Paragraph 8 of the Witness Statement of Ovin Merryman

- [34] Counsel for Ms. Lewis in her closing submissions submitted that “*it is quite clear from the evidence of both parties that although the financial contribution as made by the defendant seemed to far outweigh that of the claimant, the claimant did in fact made substantial non-financial contribution at the behest of the defendant*¹⁵”. Counsel for Ms. Lewis submits that Ms. Lewis refusal or failure to add Mr. Merryman’s name to the title of the property is a clear intention that she, as legal owner, had no intention of Mr. Merryman gaining an interest in the property.
- [35] I cannot not agree with the submissions of counsel for Ms. Lewis. The court must review the evidence to see whether there was an express common intention between the parties to share the property. Where there is no express agreement or arrangement to share, the court is then obligated to examine the whole course of dealings between the parties to ascertain whether such an agreement or understanding or arrangement can be inferred. See Baroness Hale in **Stack v Dowden** at paragraph 61 of that judgment cited above. It cannot be correct to suggest that if the legal owner of property has refused to formally acknowledge the other party’s beneficial interest, then no common intention can be inferred. Those arguments are in direct conflict with the learning from the long list of authorities from the Privy Council, House of Lords and indeed our local courts.
- [36] Taking the above facts and evidence in the round, I am of the view that a common intention can be inferred that a common intention existed between the parties to develop the land and to construct a concrete dwelling house thereon and that they each would have a share in the property. Additionally, I am of the view that the interests of justice and fairness dictate that, in the absence of an express agreement or understanding as to the extent of Mr. Merryman’s share, the court ought to have regard to the whole course of dealings between the parties to determine what is fair and/or reasonable in the circumstances. This assessment would include Mr. Merryman’s contributions over the years whether by his contributions to the mortgage with NCB and the Housing Authority loan, developing the land and/or constructing a concrete dwelling house thereon using his skills, labour and resources.

The extent of Mr. Merryman’s share/interest in the property.

¹⁵ Paragraph (xv) of Claimant’s closing submissions filed 6 July 2021.

- [37] Counsel for Ms. Lewis points out that Mr. Merryman counterclaims for 75% share in the property. Mr. Merryman averred that his interest in the property can be ascertained by removing \$45,000.00 being the original value of the land, then he would take off the land and that he was to receive 75% of the house since he was the “head of the household”. Counsel submits that being the “*head of the household*” cannot be enough to justify such a disparate allocation.
- [38] Ms. Lewis asserts that Mr. Merryman has woefully failed to provide proof that he has contributed to the repayment of the mortgage in favour of the National Commercial Bank that was used to purchase the property. Ms. Lewis had a plethora of jobs and counsel states that almost her entire salary went to the monthly mortgage payment leaving her to rely on family and friends for support. Ms. Lewis contends that the final payoff of the mortgage came from the insurance payment after the passage of Hurricane Ivan. Therefore, the court is invited to ascribe little to no percentage to Mr. Merryman in that regard since he came and met Ms. Lewis on the land.
- [39] In relation to contributions, counsel submits that it is quite clear from the evidence given by both parties that although the financial contributions as made by Mr. Merryman seemed to far outweigh that of Ms. Lewis, she did in fact make substantial non-financial contributions at the behest of Mr. Merryman. In this regard, it is said that she stayed at home and worked in his business.
- [40] Counsel states that the loan from the Housing Authority was obtained in 2005 and some 16 years later the starting balance and the balance as at October 2020 is \$4,727.86. Therefore, counsel posits that the fact that Mr. Merryman made sporadic contributions to the same over the 16 year period seems to be of no moment, since the debt is still largely present. Counsel suggests that the property should be divided equally (50/50) or in the alternative the award of shares to be determined to be 70/30 in favour of Ms. Lewis.
- [41] On the other hand, counsel for Mr. Merryman submits that the Ms. Lewis’ conduct in relation to Mr. Merryman and the property suggests that she intended Mr. Merryman to have more than an equal share in both assets and that Mr. Merryman felt himself entitled to such a larger share. Counsel submits that the parties did not contribute to the land nor the concrete house equally.

Analysis

[42] I am satisfied that Mr. Merryman made significant contributions to the development of the land and to the construction of the concrete dwelling house using his labour, skills and resources as a building contractor. The evidence before this court reveals that his contributions to both endeavours were more substantial than those of Ms. Lewis. Additionally, there is no dispute that those contributions to the development of the land and subsequent construction of the concrete house were largely through Mr. Merryman's efforts and resources. Ms. Lewis does not dispute these facts but she argues that those developments were done without her knowledge or consent and that Mr. Merryman conducted those developments of his own volition.

[43] Ms. Lewis' posture that she paid all of the financial obligations in respect of the home is not credible in view of her evidence at trial that she was not financially stable. Further, Ms. Lewis' argument that she did not give her approval to the developments on the land or had no knowledge that Mr. Merryman intended to make those developments cannot be maintained in light of the clear evidence of the substantial contributions made by Mr. Merryman. These developments/projects were not minor in nature and could not have been made without her knowledge, approval and/or acquiescence.

[44] In any event, there is no evidence that Ms. Lewis opposed these developments. On the contrary, I am satisfied that she acquiesced in those developments and improvements since she continued to reside in the dwelling house and enjoyed the property together with her entire family. I am satisfied that the construction of the home was a joint effort by the parties, especially in light of their joint effort in obtaining a loan of \$40,000.00 for construction materials from the Housing Authority to construct the house. However, as I have stated previously, I am of the view that Mr. Merryman's contributions both financial and non-financial (skills and expertise as a building contractor) far outweigh those of Ms. Lewis in relation to the development of the land and the construction of the dwelling house thereon. In the premises, I am of the view that Mr. Merryman is entitled to sixty percent (60%) beneficial share or interest in the property.

Costs

[45] With respect to the issue of costs, Ms. Lewis made a claim for possession. That claim is mainly moot since Mr. Merryman does not reside in the property. Equally, Ms. Lewis is not entitled to sole possession since I have found that Mr. Merryman has a joint interest in the property. She has been

largely unsuccessful on her claim. Mr. Merryman's counterclaim for an interest in the property is being granted in part. He has prayed that he is entitled to 75% share of the property. I have found his interest to be 60%. I am therefore of the view that each party is to bear their own costs in the proceedings.

Conclusion

[46] For the foregoing reasons, I order that:-

- (1) The fixed date claim filed on 29th September 2017 for sole possession of the property is not granted.
- (2) The defendant, Mr. Merryman is entitled to a sixty percent (60%) beneficial share of the land with dwelling house thereon situate at Resource in the parish of Saint Mark comprising nine thousand seven hundred and eighty-five square feet (9,785 sq. ft.) as referred to in the Deed of Conveyance dated 5th May 1993 between William Lawrence and Joan Lewis and recorded in the Deeds and Land Registry of Grenada in Liber 9-93 at page 239 (the property);
- (3) The claimant is entitled to forty (40%) beneficial share in the property at Resource, Saint Mark.
- (4) The property is to be valued within 60 days of today's date. The cost of the valuation shall be borne by both parties jointly.
- (5) Within 12 months of the receipt of the valuation, the claimant shall purchase the defendant's 60% share of the property;
- (6) If the claimant does not purchase the defendant's share within 12 months of the receipt of the valuation, the property is to be sold and the proceeds are to be divided between the parties with 40% of the proceeds going to the claimant and 60% to the defendant. The proceeds of the sale are only to be divided after all debts associated with the property, including the loan at the Housing Authority and all expenses and costs in relation to the sale are deducted;

- (7) If the Housing Authority exercises a power of sale before the claimant purchases the defendant's share of the property, the proceeds of any sale by the Housing Authority after deduction of the balance of its loan and all expenses and costs related to the sale, must be paid over to the parties in proportions of 40% of the sale going to the claimant and 60% of the proceeds of sale going to the defendant;
- (8) The claimant must serve the Housing Authority with a copy of this order within 7 days of this order;
- (9) The parties are to each bear their own costs on this claim.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar