

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
IN THE COMMONWEALTH OF DOMINICA**

CASE NO. DOMHCV2018/0136

BETWEEN:

**IN THE MATTER OF THE ADMINISTRATION OF THE ESTATE OF
ELIAS VIDAL WHO DIED ON THE 20TH DAY OF AUGUST 1988**

**IN THE MATTER OF AN APPLICATION BY MARIANE VIDAL AND
DELBERT VIDAL FOR THE DETERMINATION OF CERTAIN
QUESTIONS AND FOR CERTAIN RELIEFS PURSUANT TO RULE 67.4
OF THE CIVIL PROCEDURE RULES**

Appearances:

Miss Cara Shillingford for the Applicant

2020: April 16
June 11

RULING

ON WRITTEN SUBMISSIONS

[1] **STEPHENSON J.:** Elias Vidal was the husband of Mariane Vidal and father of Delbert Vidal, the applicants in the case at bar. Elias Vidal (the deceased) died on the 20th August 1988. The applicants were appointed personal representatives of the deceased's estate on the 9th October 1989. A copy of the Letters of Administration was exhibited to the application before the Court.

[2] The matter was commenced by Fixed Date Claim¹ and there is a statement of claim and affidavit in support of the claim with exhibits.

¹ See Part 67.1 (2) of the Civil Procedure Rules

[3] At the time of his death the deceased was recorded as the owner of the following pieces of land all of which were encumbered:

- I. 2 Acres of Land at Batalie Estate registered in Book A7 Folio 97 with a registered caveat on the property to Barclays Bank. This caveat was pursuant to a mortgage held by the said bank to secure the deceased's indebtedness;
- II. 1.75 acres of land at Batalie Estate registered in Book 16 Folio 59 with a registered caveat on the property to Barclays Bank. This caveat was pursuant to a mortgage held by the said bank to secure the deceased's indebtedness; and
- III. 6.025 acres of land at Syndicate registered in Book W8 Folio 20 with a registered caveat on the property to Barclays Bank. This caveat was pursuant to a mortgage held by the said bank to secure the deceased's indebtedness;

[4] The applicants contended that at the date of his death the value of the deceased's estate was nil in that it was insolvent based on the fact that his funeral expenses and bona fide debts exceeded the value of his assets.

[5] It is claimed and contended that the first named applicant, the widow of the deceased, since his death worked and utilised all of her earnings to pay off the debts owed by her deceased husband and that in doing so, she has purchased the assets of the estate and has gained a beneficial interest as owner of the said properties.

[6] The first named applicant also submits that prior to her husband's death she worked alongside him and contributed to the purchase of the properties which were all registered in her deceased husband's name and based on that fact she

also holds a beneficial interest in the estate based on a resulting and /or constructive trust in her favour.

[7] The applicants have informed this court that it is their intentions as personal representatives to make transfer of various portions of land to the six children of the deceased and they have laid out in the fixed date claim the details of their intended transfers.

[8] The applicants also inform the court of their intention to sell and or transfer the remaining properties registered in the deceased's name to the first named applicant.

[9] The deceased died intestate and it is well established and understood under the laws of intestacy that the surviving wife receives a life interest and the estate of the intestate falls to be divided equally amongst his surviving children.

[10] In the circumstances of this case the applicants seek the following orders from this court:

1. a determination as to who is the beneficial owner of the properties which form part of the estate of Elias Vidal;
2. a declaration that the first named applicant Mariane Vidal is the beneficial owner of all the aforementioned portions of land all registered in the name of Elias Vidal deceased; and
3. an order authorizing the applicants to distribute the aforementioned properties according to the wishes of the first named applicant as stated in the fixed date claim.

[11] The first named applicant swore to an affidavit in support of the fixed date claim. In her affidavit she stated the facts supporting the application before the court, including the application for the court's approval of the intended distribution of the properties registered in her deceased husband's name. The pertinent facts being as follows, that:

- a. she is also known as Seraphine Vidal;
- b. she is the widow of Elias Vidal who died on the 20th August 1988.
A copy of the death certificate was attached;
- c. she and her son Delbert Vidal were appointed Personal Representatives of her husband's estate;
- d. there were six children of the marriage;
- e. her husband's estate was insolvent at the time of his death and described as 'nil' on the letters of Administration. The Letters of Administration were exhibited;
- f. prior to her husband's death she and her husband worked together on their farm and she also worked as a supervisor at DBMC and at the same time cooked, cleaned and took care of her family;
- g. prior to his death the deceased purchased three pieces of land which were all registered in his name. At the time of the registration she did not object to the properties being registered in her husband's name, as it was understood between them that the properties belonged to both of them. Copies of the certificates of title were all exhibited;
- h. she contributed through her hard work to the purchase of the properties;
- i. at the time of his death, her husband had significant debts and that Barclays Bank Plc, held mortgages on each of the properties as a result of their indebtedness to them. Copies of the declaration on oath of the value of her husband's estate and the caveats held by Barclays Bank Plc were all exhibited;
- j. after her husband's death she worked very hard to repay the debts as well as take care of the children of the family who were all young at the time ranging from the ages of 23 to 15;

- k. that she continued in her employment and worked the farm to make the payments, eventually leaving her employment at the DBMC to focus solely on agriculture;
- l. there came a time she was incapacitated and unable to work and during that period Barclays Bank Plc deducted the loan payments from her personal savings accounts to service the loans;
- m. she later refinanced the loans by taking a loan from the Salisbury Co-operative Credit Union, the proceeds of which paid off Barclays Bank Plc. Copies of letters received from Barclays Bank Plc proving repayment of the loans to that institution were exhibited in proof of the repayment;
- n. upon repayment of the loans to Barclays Bank Plc, the Certificates of title to the lands registered in the name of her husband were handed over to the Salisbury Co-operative Credit Union. A copy of the cover letter regarding this was exhibited;
- o. in 1993 she refinanced her loan at the Salisbury Co-operative Credit Union and also purchased another piece of agricultural land. This transaction was done in her second name that is in the name of Seraphine Vidal. A copy of this loan agreement was exhibited;
- p. in 1993 she left the shores of Dominica in search of greener pastures and managed to work and remit money to her children and to the Salisbury Co-operative Credit Union to pay off all her indebtedness which included the debt that existed at the time of her husband's death;
- q. having paid off all the debts that existed at the time of her husband's death, she feels that she is entitled to beneficial ownership of the properties especially in view of the fact that at the time of his death the estate was valued nil.

[12] The first named applicant averred of her intention to jointly with her son Delbert who is the co-administrator of her husband's estate to transfer parcels of land to the children of the family and to transfer to her a parcel of land comprising 7,104 square feet of land located at Salisbury forming part of the property registered in Book A7 Folio 97. She also seeks the court's approval to do as she wishes in the future with the remaining portions of land.

[13] Learned Counsel Miss Cara Shillingford was ordered to make submissions in support of her application. These submissions were filed on the 20th April 2020. The application is unopposed. This is my ruling.

[14] The issues to be considered and decided by the court are:

1. What is the first named applicant's interest in the properties which form part of her deceased husband's estate?
2. Does the first named applicant have a beneficial interest in the said estate by virtue of a constructive or resulting trust?
3. Does the law of unjust enrichment apply to the case at bar and if so what remedy can it provide the first named applicant?
4. Can the first named applicant transfer land in the estate to satisfy her interest if any? and
5. Whether or not the court will approve the applicants' proposed actions pursuant to Part 67.4(3) of CPR?

[15] This application is quite correctly brought pursuant to Part 67 of the Civil Procedure Rules 2000 which provides for "*Administration Claims*". This section governs claims for "*the administration of the estate of a dead person... to determine any question or grant any relief relating to the administration of the estate of a dead person or the execution of trust*"².

[16] Part 67.4 (2) and (3) provide:

² CPR Part 67(1)

(2) The “*determination of any question*” includes any question –

- (a) arising in the administration of the estate of a deceased person; (b) arising in the execution of, or under a trust;
- (c) as to the composition of any class of persons having a claim against –
 - (i) a beneficial interest in the estate of a deceased person;
 - (ii) any property subject to a trust; or
 - (iii) the estate of a deceased person; and
- (d) as to the rights or interests of a person claiming to be –
 - (i) a creditor of the estate of a deceased person;
 - (ii) beneficially entitled under a trust; or
 - (iii) entitled under a will or on the intestacy of a deceased person.

(3) “*Any relief*” includes an order –

- (a) approving any sale, purchase, compromise or other transaction by a person in the capacity of executor, administrator or trustee;
- (b) directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust, which the court could order to be done if the estate or trust were being administered or executed under the direction of the court;
- (c) directing a person to do or abstain from doing a particular act in the capacity of executor, administrator or trustee;
- (d) requiring an executor, administrator or trustee to furnish and verify accounts; or
- (e) requiring the payment into court of money held by a person in the capacity of executor, administrator or trustee.

[17] It is the applicants’ submission that there is a constructive trust in favour of the first named applicant. The applicants invite the court to find, that based on the facts presented to this court to wit, that the first named applicant was in her personal capacity responsible for the debts which rendered her deceased husband’s estate

insolvent at the time of his death. Learned Counsel Cara Shillingford submitted that at the time of his death, there was no equity in the estate as the debts exceeded the value of the assets of the estate. Learned Counsel asked this court to take into consideration that the first name applicant presented the court with evidence that had it not been for her taking on the repayment of the debt personally the estate would not have been able to redeem the properties.

[18] Learned Counsel also submitted to the court that even before his death the first named applicant would have acquired a beneficial interest in her deceased husband's property as a constructive trustee based on the facts adduced by the applicant that she worked alongside her husband and assisted in the acquisition of the property and did not object to the property being registered in his name as they both knew that the property belonged to both of them. Further, that in addition to working and earning an income, she worked on the farm and attended to her family.

The principles of constructive trust

[19] The law is well settled that where the legal estate is vested in one person and a beneficial interest is claimed by another, the claim can only succeed if the person claiming, can establish a constructive trust by evidence of a common intention that he or she was to have a beneficial interest and by establishing, that in reliance on that common intention she acted to her detriment.

[20] In **Grant v. Edwards**³, Sir Nicholas Browne-Wilkinson V.C, stated the criteria for the existence of a constructive trust as follows:

"If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a beneficial interest, has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated (a) that there was a common intention that both should have a beneficial interest; (b)

³[1986] Ch 638, [1986] 2 All ER 426, [1986] 3 WLR 114,

that the claimant has acted to his or her detriment on the basis of that common intention....”⁴

[21] It is well established law that in the absence of express words evidencing the requisite common intention between two parties, the court may infer the requisite intention from the conduct of the parties.

[22] The first named applicant in this case will have to establish that she as the wife of the deceased has a beneficial interest in the property comprising the estate of Elias Vidal to which had the husband been alive he would have been bound to give effect.

[23] Learned Counsel Cara Shillingford quoted and relied on the oft quoted excerpt from the dicta of Lord Bridge in the House of Lords Case **Lloyds Bank plc –v- Rosset**⁵. For myself I would prefer to quote the entire couple of paragraphs which include that which was quoted by counsel. There is much guidance to be taken there from:

“The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.

In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and

⁴ 1986] Ch 638, at page 654

⁵[1991] 1 AC 107,[1990] 1 All ER 1111,[1990] 2 WLR 867

where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage installments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do.”⁶

[24] Learned Counsel also made reference to and relied on the Privy Council case of **Abbott –v- Abbott**⁷an appeal emanating out of Antigua and Barbuda. Baroness Hale of Richmond delivered the advice of the Board and she stated:

“There are, of course, two separate questions: first, was it intended that the parties should share the beneficial interest in a property conveyed to one of them only; and second, if it was so intended, in what proportions was it intended that they share the beneficial interest? There are two separate concepts which may help in answering those questions, explained by Peter Gibson LJ in *Drake v Whipp*[1996] 1 FLR 826 at 827:

‘A potent source of confusion, to my mind, has been suggestions that it matters not whether the terminology used is that of the constructive trust, to which the intention, actual or imputed, of the parties is crucial, or that of the resulting trust which operates as a presumed intention of the contributing party in the absence of rebutting evidence of actual intention.

It is now clear that the constructive trust is generally the more appropriate tool of analysis in most matrimonial cases. As Lord Walker of Gestingthorpe explained in **Stack v Dowden**[2007] 2 WLR 831, at para [31]:

‘In a case about beneficial ownership of a matrimonial or quasi-matrimonial home (whether registered in the name of one or two legal owners) the resulting trust should not in my opinion operate as a legal presumption, although it may (in an updated form which takes account of all significant contributions, direct or indirect, in cash or in kind) happen to be reflected in the parties’ common intention. ...”

...

⁶[1991] 1 AC 107 at pages 132 to 133

⁷ [2007] UKPC 53, (2007) 70 WIR 183

[6] Lord Walker, Lord Hoffmann and Lord Hope of Craighead all agreed with my own opinion, in which I summed the matter up thus (at para [60]):

'The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.'

The House also approved a passage from the Law Commission's discussion paper on Sharing Homes (2002, Law Com No 278, para 4.27):

'If the question really is one of the parties' "*common intention*", we believe that there is much to be said for adopting what has been called a "*holistic approach*" to quantification, undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended."⁸

[25] Learned Counsel submitted that based on the evidence placed before the court there was a constructive trust between the first named applicant and her deceased husband during his life time. That although the properties were registered in his sole name it was intended that the property would belong to both the first named applicant and her deceased husband. Counsel submitted that this conclusion can be drawn based on the evidence before the court.

[26] This court would add to the authorities cited by learned counsel, the learning obtained from Halsbury's Laws of England⁹ which states as follows:

"Where there is no duly signed written declaration of trust of land a constructive trust will arise in connection with the legal title to property wherever one party has so conducted himself that it would be inequitable to allow him to deny to the other party a beneficial interest in the property acquired. This will be so where: (1) there was a common intention that

⁸Ibid paras 5 and 6

⁹ Halsbury's Laws of England (2019) Vol. 98 at paragraph 117. **Kindly note that even though the paragraph has been extensively quoted all the authorities cited have not been used or cited herein.**

both parties should have a beneficial interest; and (2) the claimant has acted to his detriment or significantly altered his position in reliance upon that common intention.

The first question is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the property, there have at any time prior to acquisition, or exceptionally at some later date, been any discussions leading to an actual agreement, arrangement or understanding reached between them that the property is to be shared beneficially. Such an agreement will normally be conclusive.

Where there were no such discussions, the court may infer an actual⁴ common intention that the property was to be shared beneficially from the conduct of the parties. The starting point in dealing with family homes is that '*equity follows the law*', so that if the legal title is in M the presumption is that M is the sole beneficial owner, but if the title is in the names of M and W the presumption is that they are beneficial joint tenants. The presumption can be displaced by showing that the parties actually had a different common intention at the time they acquired the home or that they later formed the common intention that their respective presumed shares would change. Their actual common intention is to be inferred objectively from their conduct, the relevant intention of each party being that which was reasonably understood by the other to be manifested by that party's words or conduct, notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention that he did not communicate to the other party.¹⁰ Direct contributions to the purchase price of a family home by the party who is not the legal owner, whether initially, or by way of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust¹¹. Many more factors than simply financial contributions, however, are now relevant to divining the parties' true intentions⁹. These include any advice or discussions at the time of acquiring title which cast light on their intentions; the reason why title was taken in one or two names; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed both initially and subsequently; how the parties arranged their finances (whether separately or together or a bit of both); how they discharged the outgoings on the property and their other household expenses (for example, one party's payment of such

¹⁰ **Gissing v Gissing** [1971] AC 886 at 906, [1970] 2 All ER 780 at 709, HL, per Lord Diplock;

¹¹ **Abbot v Abbot** [2007] UKPC 53 at [5]–[6]

expenses and outgoings making it possible for the other to make the mortgage payments).

When the parties are joint owners and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is the owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would eventually benefit or be burdened equally. It will be more unusual to infer that M and W should have beneficial interests different from their legal interests where they are joint legal owners than where only one has the legal title.

Where, at the outset, there was an express or inferred actual common intention not to have beneficial interests reflecting the legal title, or where this position developed later, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property (when effect would be given to such intention), 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 property¹². Imputation of a fair share thus becomes possible only after an express or inferred actual common intention has been discovered but has not fixed upon particular shares.

Once common intention has been established, whether by direct evidence of common agreement or by inference from conduct, the courts are ready (especially in joint name cases where there is joint mortgage liability) to accept that the claimant acted to his detriment or significantly altered his position in reliance on the agreement rather than out of love for the defendant.

It is to be noted that in family home cases no longer is any reliance to be placed upon the doctrine of purchase-money resulting trusts to see if some small financial contribution to purchase moneys may act as a springboard to a finding of a larger share under a constructive trust. The focus from the outset is now upon whether or not a common intention

¹²**Jones v Kernott** [2011] UKSC 53 at [51]–[52], [55], [2012] 1 AC 776 at [51]–[52], [55], [2012] 1 All ER 1265 at [51]–[52], [55]. “*The whole course of dealing in relation to the property*” should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties’ *actual intentions*’: **Jones v Kernott** at [51(4)].

constructive trust can be established in the claimant's favour¹³. ...”
(emphasis mine)

[27] Learned Counsel Miss Shillingford also submitted to the court that should the court be mindful to have the land passed solely to the estate of the deceased, to do so would allow the estate to retain sole ownership of the properties and the said estate would therefore be unjustly enriched to the first applicant's detriment.

[28] Counsel submitted that claims in unjust enrichment arise when a defendant is enriched at the expense of the claimant in circumstances which makes the enrichment unjust.

[29] It is to be noted that whether or not the court rules in favour of the applicant and declare that she is part owner of the property based on the doctrine of constructive trust, the wife has a life interest in the entire estate which comes before the properties can go to the children

[30] Lord Wright in **Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd**¹⁴ made what has come to be considered a classic statement of the law on unjust enrichment, he said:

“It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution.

¹³ **Jones v Kernott** [2011] UKSC 53 at [53], [2012] 1 AC 776 at [53], [2012] 1 All ER 1265 at [53] per Lord Walker and Baroness Hale with whom Lord Collins agreed at [55]. In **Stack v Dowden** [2007] UKHL 17, [2007] 2 AC 432, [2007] 2 All ER 929, Lord Neuberger applied the resulting trust approach at [110]–[122], but this was rejected by Baroness Hale at [59]–[68] with whom the others agreed, as accepted in **Fowler v Barron** [2008] EWCA Civ 377 at [26], [31], [2008] 2 FLR 1 at [26], [31], 11 ITEL 198 at [26], [31].

¹⁴ [1943] A.C. 32 at page 61

[31] Learned Counsel cited and relied on the statement of law extracted from the United Kingdom Supreme Court Case of **Bank of Cyprus UK Limited-v-Menelaou**¹⁵:

“ ... It appears to me that this is a case of unjust enrichment. In **Benedetti v Sawiris**¹⁶ the Supreme Court recognised that it is now well established that the court must ask itself four questions when faced with a claim for unjust enrichment. They are these:

- (1) Has the defendant been enriched?
- (2) Was the enrichment at the claimant's expense?
- (3) Was the enrichment unjust?
- (4) Are there any defences available to the defendant?

... ”¹⁷

[32] Lord Clark then proceeded to make reference to a number of authorities in support of this statement.¹⁸

[33] Learned Counsel also cited and relied on a case emanating out of our own jurisdiction **Caribbean Development (Antigua) Limited –v- Electronic Technology International (Antigua) Limited**¹⁹

[34] Counsel quoted from the judgment of Justice of Appeal Gordon when he said:

“[10] *Unjust enrichment presupposes three things. ‘First the defendant must have been enriched by the receipt of a benefit. Secondly, that benefit must have been gained at the plaintiff's expense. Thirdly, it would be unjust to allow the defendant to retain that benefit’.* (The Law of Restitution, Goff and Jones 5th ed. at page 15). The first and second presuppositions are matters required to be proved by the claimant (respondent) and the third is a matter of legal inference derived from the evidence.

...

¹⁵ [2015] UKSC 66, [2016] 2 All ER 913 (this is a case out of the Supreme Court of the UK and not the Privy Council as stated by learned Counsel in her submissions)

¹⁶ [2013] UKSC 50, [2013] 4 All ER 253, [2014] AC 938

¹⁷ Ibid paragraph 18 per Lord Clark

¹⁸ Benedetti at para [10], following **Banque Financière de la Cité v Parc (Battersea) Ltd** [1998] 1 All ER 737 at 740, [1999] 1 AC 221 at 227 per Lord Steyn (and per Lord Hoffmann to much the same effect [1998] 1 All ER 737 at 747, [2016] 2 All ER 913 at 920 [1999] 1 AC 221 at 234) and **Investment Trust Companies v Revenue and Customs Comrs** [2012] EWHC 458 (Ch), [2012] STC 1150 (at [38]) per Henderson J (ITC)”.

¹⁹ Civil Appeal no. 13 of 2005 (Antigua & Barbuda), [2006] ECSCJ No. 95

[16] This formulation of the basis of a successful claim for unjust enrichment is very similar to that put forward in Goff and Jones (see paragraph [10] above). The obvious difference, in words, is the use of the term "*unjust*" in Goff and Jones and the requirement for "*an absence of juristic reason*" in Canada. The difference is apparent, rather than substantive. As Binnie J said at paragraph 22 in answer to the question:

"Is there a juristic reason to deny recovery to the appellant?:

"This branch of the test for unjust enrichment is pivotal, for as McLachlin J observed It is at this stage that the court must consider whether the enrichment and detriment, morally neutral in themselves, are 'unjust"

[17] Binnie J continued:

There are now two stages to the juristic reason inquiry. At the first stage, a claimant (here the appellant) must show that there is no juristic reason within the established categories that would deny it recovery. The established categories are the existence of a contract, disposition of law, donative intent, and "other valid common law, equitable or statutory obligatio[n]".... On proving that none of these limited categorical reasons exist to deny recovery, the plaintiff (here the appellant) will have made out a prima facie case of unjust enrichment. It will have demonstrated "*a positive reason for reversing the defendant's enrichment*" (Smith, at p. 244)⁵.

Although this information requires the plaintiff to prove a negative, the task is made manageable by the limited number of categories, and it is only fair to put on the claimant the onus of proving the essential elements of its cause of action.

At the second stage, the onus shifts to the defendant (here the respondent City), who must rebut the prima facie case by showing that there is some other valid reason to deny recovery. In the absence of a convincing rebuttal, the transfer of wealth will be reversed. According to Garland, it is at this stage that the court should have regard to the reasonable expectation of the parties and public policy considerations.

[18]The Supreme Court held that the claim derived from the City's ultra vires demand for works and improvements to which it was not entitled and the court was entitled to sever from the overall contractual arrangements between the parties the exchange of promises flowing from the initial ultra vires demand. The net result in this case was that once the portion of the contract demanding the works and improvements (which had been executed by the appellant for \$1.08 million) was severed from the rest of the contractual arrangements between the parties, the ultra vires act by the City made that portion of the contract void and hence, there was no juristic reason to deny recovery."²⁰

[35] These passages quoted and relied on by learned Counsel Ms Cara Shillingford in my humble judgment are clearly apt and they cover and set out the law on unjust enrichment. I can do nothing else but gratefully adopt them as my own.

[36] Learned counsel reiterated that the evidence which has been produced to this court shows that the first named applicant during her husband's lifetime assisted and contributed when she worked on the farm and outside of the home as well as took care of the family. Counsel invited the court to take note that the evidence adduced before this court from the first named applicant was that when the property was purchased in the name of her deceased husband she did not object because it was always understood that the property belonged to both of them.

[37] Learned Counsel also submitted that the defendant's sudden death was not contemplated and pointed out to the court that the circumstances prior to his death and after his death show that the wife can seek refuge under the doctrine of unjust enrichment.

²⁰ Ibid paragraphs 10 and 16 through 18

[38] Applying the test as laid down in **Bank of Cyprus UK Limited-v- Menelaou**²¹ this court will ask itself the recommended questions in the following manner:

(1) ***Has the estate of Elias Vidal been enriched?*** The answer to that question would be yes and for this reason. At the time of his death all the property was encumbered and the liabilities of the estate exceeded the value of the assets of the estate rendering the estate insolvent. The first named applicant has provided evidence to the court where she worked and managed to clear off all the indebtedness of the estate allowing the estate to redeem the property. So from being an insolvent estate the estate is now one with property (assets);

(2) ***Was the enrichment at the first named applicant's expense?*** Based on the evidence presented to the court it is clear that the estate was more or less rescued by the first named applicant in terms of her making the payments, refinancing the mortgage and remitting monies to pay. So it clearly was at the expense of the first named applicant. It is to be noted that the first named applicant would have paid more on the mortgages than her deceased husband, as based on the evidence adduced, the mortgages were taken out just nine months prior to the deceased death.

(3) ***Was the enrichment unjust?*** Yes it would be because the estate would have derived the benefit from the first name applicant and it would be against good conscience that the estate should keep the assets solely.

(4) ***Are there any defences available to the estate?*** Based on the facts as presented there is no perceivable defence that would be available to the estate.

[39] To my mind it is clear that, for the property to revert to the estate solely would be to unlawfully enrich the estate.

[40] Learned counsel Miss Shillingford then referred to the provisions of **the Intestate Estates Act**²² and submitted that pursuant to section 7(1)²³ of the said **Act** the

²¹ [2015] UKSC 66, [2016] 2 All ER 913 (this is a case out of the Supreme Court of the UK and not the Privy Council as stated by learned Counsel in her submissions)

²² Chapter 9:03 of the Laws of the Commonwealth of Dominica

²³ Section 7(1) provides:

"Where a surviving husband or wife is entitled to a life interest in the residuary estate or any part thereof, the personal representative may, either with the consent of any such tenant for life (not being also the personal representative) or, where the tenant for life is the sole personal representative, with the leave of the Court, purchase or redeem the life interest (while it is in possession) by paying the capital value thereof (reckoned according to the tables selected by the personal representative) to the tenant for life or the persons deriving

surviving spouse can and is entitled to redeem her life interest which she would have obtained under section 4(1) of the **Intestate Estate Act**.

[41] Learned counsel submitted that the alternative position to the first name applicant having an constructive beneficial interest in the assets of the estate of her deceased husband and to a benefit upon the application of the unjust enrichment principle that the applicants as personal representatives can lawfully transfer a portion of the land comprising the estate of her deceased husband to the first named applicant as compensation for her life interest that is for her 10% plus the 5% annual statutory interest that she would be entitled to calculated from the deceased death on the 20th August 1988 to date.

[42] Counsel noted and submitted also that the first named applicant can also redeem her life interest in the estate and in this regard it is to be noted that at the time of her husband's death the first named applicant was 40 years old and therefore the multiplicand in her favour would be substantial. To do so would mean that the Personal Representatives of the estate would have to pay to her the capital value of her life interest. Counsel submitted that this payment can take the form of transferring to the first name applicant properties equivalent to the capital value of her life interest.

[43] Learned Counsel in addressing this matter thoroughly, made mention regarding the right of subrogation which the first name applicant also has and she relied on the Dicta of the court in **Menelaou**²⁴.

Conclusion

[44] The first name applicant's claim for a beneficial interest in the land subject of this application is based on a large part to her financial contribution to the acquisition

title under him or her and the costs of the transaction, and thereupon the residuary estate may be dealt with or distributed free from the life interest"

²⁴ supra

of the property both during her deceased husband's life time and redeeming the titles to same after his death.

[45] In the absence of evidence to the contrary this court accepts the evidence adduced by the first named applicant that in her husband's lifetime she worked on the farm with him and outside of the home at DBMC as well as, she looked after the family. She has in this court's view discharged her evidentiary burden which she bore on a balance of probabilities, that her contribution showed common intention and detrimental reliance on her part.

[46] The evidence as presented by the first named applicant as to her actions after her husband's death has to this court's minds further solidified her position. She has clearly adduced ample evidence of direct contributions to the paying off of the mortgage on the property facilitating it to be discharged which allowed the estate which was of no value at the time of her husband's death to become "*populated*" with assets for the want of a better word. It is to be noted that her husband died some 9 months after the mortgages were taken so it is clear that she would have paid a substantive amount of the monies borrowed and repaid to Barclays Bank Plc and then to the Salisbury Co-operative Credit Union.

[47] The first name applicant has also made out a case that in the alternative there would be a case of unjust enrichment if the estate were to have ownership of the entire property solely after she has for the most part paid for it out of her earnings.

[48] Finally based on the provisions of the **Intestate Estate Act** the first name applicant as the surviving spouse would be entitled to a life interest which under the provisions of the said act she is entitled to redeem, which to this court's mind would enable the applicants to transfer a portion of the estate to her in lieu of paying her the capital value of her life interest plus that which she is owed as a surviving spouse by the estate and the interest payable to her.

[49] This court takes into consideration counsel's submission that the first named applicant's primary position is that she has beneficial interest in the property of almost 100% and will declare that based on the evidence adduced and the payments made by the first name applicant that she is entitled to a beneficial interest of 90% in the property.

[50] Based on the above stated reasons this court will declare that the first named applicant Mariane Vidal is the beneficial owner of 90 % of all the portions of land all registered in the name of Elias Vidal deceased to wit:

- (i) 2 Acres of Land at Batalie Estate registered in Book A7 Folio 97;
 - (ii) 1.75 acres of land at Batalie Estate registered in Book 16 Folio 59; and
 - (iii) 6.025 acres of land at Syndicate registered in Book W8 Folio 20;
2. It is hereby ordered that the applicants as Personal Representatives and the first name applicant as duly declared owner of 90% of the said property, shall distribute the said properties in accordance with the wishes of the first named applicant.
3. That the properties will be subdivided and parcels hatched off accordingly to facilitate the following transfers:
- (a) 0.26 acres at Batalie Estate (Salisbury) and currently registered in Book 16 Folio 59 to Clyve Vidal;
 - (b) 0.25 acres at Batalie Estate (Salisbury) and currently registered in Book 16 Folio 59 to Eard Vidal;
 - (c) 0.25 acres at Batalie Estate (Salisbury) and currently registered in Book 16 Folio 59 to Eliane Vidal;
 - (d) 0.25 acres at Batalie Estate (Salisbury) and currently registered in Book 16 Folio 59 to Delbert Vidal;
 - (e) 0.25 acres at Batalie Estate (Salisbury) and currently registered in Book 16 Folio 59 to Lipson Vidal

(f) 0.25 acres at Batalie Estate (Salisbury) and currently registered in Book A7 Folio 97 to Simon Vidal.

4. The applicants as Personal Representatives of the Estate of Elias Vidal shall transfer the remainder of the lands to the first named applicant Mariane Vidal to do with as she wishes.

[51] This court wishes to express its appreciation to learned counsel Ms Cara Shillingford for her careful, cogent and persuasive submissions which were of great assistance.

M E Birnie Stephenson
High Court Judge

[SEAL]

BY THE COURT

REGISTRAR