

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0191

BETWEEN

YOLANDER JARDINE

CLAIMANT

AND

ELLIOT LABORDE
(EXECUTOR IN THE ESTATE OF RAY LABORDE)

1st DEFENDANT

ELLIOT LABORDE

2nd DEFENDANT

Appearances:

Mr. Duane Daniel with him Ms. Rose Ann Richardson for the claimant.

Mr. Joseph Delves with him Mr. Grenville John for the defendants.

2017: Oct. 26
2018: Jan. 25
Feb. 8
Apr. 12 & 26
Jun. 19
Jul. 11

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Ray LaBorde is the deceased former husband of Yolander Jardine. They were high

school sweethearts who eventually wed. Mrs. Jardine lives in the Dominion of Canada. Her union with Ray LaBorde was terminated by a Divorce Order of the Superior Court of Justice, Canada on March 24th 2011. Ms. Jardine has since remarried. Ray LaBorde died 4 years later on July 12th 2015. He named his nephew Elliot LaBorde as the executor of his Will. It is common ground that no ancillary proceedings took place in relation to the divorce.

- [2] Mrs. Jardine claimed that she and Ray LaBorde jointly constructed a house on land at Mount Pleasant, Saint Vincent, which was gifted to her by her father. She maintains that Ray LaBorde's estate is not entitled to the value of the land on which the house was constructed. She alleged that she made attempts unsuccessfully to get Ray LaBorde to settle her interest in the property. She filed the instant claim against Elliot LaBorde as executor of Ray LaBorde's Will and in his personal capacity.
- [3] Mrs. Jardine has applied for declarations including an order that Ray LaBorde's estate is entitled to only an interest in the value of the house but not in the land. She sought an assessment of his estate's interest in the house; inventory of the contents of the house; and an interpretation of his Will regarding whether it provides for a residuary gift. She also claimed an order for sale of the property and costs.
- [4] Elliot LaBorde resisted the claim. He acknowledged that his uncle Ray and Mrs. Jardine always intended to build the house together on the land. He alleged that the deceased built it with the proceeds of a loan he and his mother obtained from a credit union. He accepted that Mrs. Jardine paid part of the mortgage but maintained that she paid a lesser amount than Ray LaBorde and that she stopped doing so after Mr. LaBorde's demise.
- [5] Elliot LaBorde filed a counterclaim in which he applied for a declaration that Ray LaBorde owned a share, equity or interest in the subject land which devolves to his estate. He submitted that the deceased's share should be quantified at 50% or such other quantum determined by the Court. Ms. Jardine did not file a Defence to the ancillary claim. I have found that Mrs. Jardine and Mr. Ray LaBorde's estate are entitled to an equal interest in the land on which the house sits in the value of the house.

ISSUES

[6] The issues are:

1. To what interest in the subject property is Yolander Jardine and Ray LaBorde's estate entitled?
2. Whether Ray LaBorde's Will provides for a residuary gift?
3. To what remedies are Yolander Jardine, Elliot LaBorde and Ray LaBorde's estate entitled?

ANALYSIS

Issue 1 - To what interest in the subject property is Yolander Jardine and Ray LaBorde's estate entitled?

[7] In 1989, Ms. Jardine's father Joffre Cecil Jardine gave her one acre¹ of land at Mount Pleasant Marriaqua. It was registered in her name by Deed of Gift 708 of 1989. Ray LaBorde's name was not entered on it. Ms. Jardine said that her intention was to build a house on the land. Prior to marrying, she and Ray LaBorde had a daughter Tonika who was born on 10th September 1991. By then, Ray LaBorde already had another daughter – Masheica Thomas from another relationship.

[8] Ms. Jardine migrated to Canada roughly seven years after giving birth. Tonika accompanied her. Ms. Jardine returned to the State periodically and maintained the relationship with Ray LaBorde. They cemented their bond and commitment to each other on 10th July 1999 when they got married. Nothing was built on the land at that time.

[9] Ray LaBorde remained in Saint Vincent and Mrs. Jardine returned to Canada. At some point Ray LaBorde went abroad to pursue studies. After training as a teacher he returned to Saint Vincent where he was employed as a teacher up to his retirement. Mrs. Jardine kept on visiting him during the course of their relatively short marriage. At times, he would travel to Canada to be with her for short periods.

¹ The Court takes judicial notice that one acre amounts to 43,562 sq. ft.

- [10] Five years after they got married, Ms. Jardine mortgaged² 30,914 sq. ft. of the land to the Saint Vincent Union of Teachers Co-operative Credit Union Ltd. to secure a loan to build a dwelling house on it. As part of that transaction, Ray LaBorde's mother Eucina LaBorde provided additional collateral in the form of a ½ acre lot belonging to her at Evesham. Ray LaBorde's sister, Mrs. Doradeen LaBorde-Campbell testified that her mother made the decision to provide such security after holding discussions with other members of the family. Ray LaBorde was named as principal in the mortgage. It was registered as Deed of Mortgage 1652 of 2004.
- [11] The Credit Union advanced the sum of \$262,398.00 to Mr. LaBorde on the strength of the collateral provided by his mother and wife. From those funds, the dwelling house which is the subject of this claim was built on the parcel of land registered to Ms. Jardine. The following year, the credit union advanced a further sum of \$15,000.00 to the mortgagors and Ray LaBorde by a Deed of Further Charge No. 198 of 2005.
- [12] According to Elliot LaBorde construction started in 2004 and was completed in 2005. Ray LaBorde and Ms. Jardine arranged their affairs so that they would each contribute to the mortgage payments and they did so. Ray LaBorde agreed to pay \$1400.00 per month while Ms. Jardine was responsible for paying \$1100.00 monthly. I accept this to be so.
- [13] Ray Laborde never migrated to Canada and Ms. Jardine did not return to Saint Vincent for any extended period. They continued to visit each other. The evidence is that Ms. Jardine came back to Saint Vincent briefly in 2005 and 2007. Whenever she did, she stayed with Ray LaBorde in the referenced dwelling house, which became Mr. LaBorde's permanent residence.
- [14] Mrs. LaBorde-Campbell provided uncontroverted testimony that he lived there for 10 years before he passed away. She said that Ms. Jardine visited with Ray early on in the marriage but had not done so for four years prior to the divorce. In her pleadings, Mrs. Jardine described the house as the matrimonial home. She moved away from that position in her closing submissions and

² By Deed of Mortgage registered on 6th May 2004.

submitted that the house was not the matrimonial home. The relationship turned sour and the marriage was eventually terminated.

[15] By letter dated 1st September 2011, Ms. Jardine's lawyer Mr. Duane Daniel, wrote to legal practitioner Mr. Grenville John asking him to indicate 'Mr. Jardine's (sic) intention for disposal of the property'. Ms. Jardine testified that they did not come to an agreement so she proposed that the interests in the property be transferred to their daughter Tonika Jardine-LaBorde. She sent Ray LaBorde a draft Deed already signed by her, to effect such a transfer. He did not oblige.

[16] Ms. Jardine testified that Ray LaBorde responded that he did not understand the document. Consequently, she wrote to Mr. John once more requesting that he seek to bring finality to the matter. She received no response. Ray LaBorde and Ms. Jardine did not finalize any agreement regarding division of the property.

[17] Elliot LaBorde now lives in the subject property. He and Masheica Thomas claimed that he has done so since 2007. Ms. Thomas said that he moved there at her father's invitation. Ms. Jardine contended that he moved there only after Ray LaBorde died and that he previously lived in Georgetown with his family. She averred that during her previous visits to Saint Vincent he did not live there.

[18] Masheica Thomas recounted that her father's Will was read in her presence after his funeral. She recalled that Tonika and other relatives were present. Elliot LaBorde produced a copy of the Will. He explained that it is Ray LaBorde's last Will and Testament. The material parts state:

'I give my 50% interest in the dwelling house to my nephew Elliot LaBorde for his lifetime. The house is located at Month Pleasant Mespo. In the event that the house is sold the proceeds of my 50% share should be divided equally between Elliot and my two daughters Tonika Jardine LaBorde and Masheika Thomas.

I acknowledge that the other 50% share of the dwelling house belong to my ex wife Yolanda, currently residing in Canada. After all expenses are paid any residue should be share for the rest of my family by the executor as he sees fit'.

- [19] Ms. Jardine submitted that by that document Ray Laborde purports to appoint Elliot LaBorde as his executor and leave his 50% share of the dwelling house to him for life. She contended further that it provides that if the property is sold, the proceeds are to be divided equally between the Elliot LaBorde and Ray LaBorde's two daughters, Tonika Jardine-Laborde and Masheica Thomas.
- [20] Ms. Jardine expressed the belief that she holds legal title to the property considering that the land was gifted to her prior to marriage. She said that together with her contribution to the construction of the house she felt that the lion share if not the entirety of the property would be hers. She averred that she has many and varied items on the property, including personal effects such as furniture and other contents in the house which she bought and placed there.
- [21] She testified further that she bought most of the contents of the house, tiles, living room contents, rugs, stereo and turntable, curio and kitchen counters, microwave, cake mixer, blender, sewing machine and transformer. She attached to her witness statement a series of receipts which she claimed proved her purchases and entitlement.
- [22] Ms. Jardine described an occasion when she went to the house after Ray LaBorde's death and confronted Elliot LaBorde. She eventually involved the police. That incident does not assist me in determining ownership of the property. I choose to omit those details in this decision. They add nothing useful. Ms. Jardine maintained that Ray LaBorde's interest is restricted to the house and does not include the land.
- [23] She testified that she and Ray LaBorde had an arrangement whereby they would each pay one half of Tonika's tuition expenses. She explained that they came to a further agreement that since they were equally responsible for the mortgage payments and because Tonika resided in Canada with her they would set off the payments; whereby he would make the full mortgage payments during her daughter's time at college, while she would pay their daughter's full tuition. She said that

the tuition payments were continuous and the amounts varied by course. She stated that it was CD\$2500.00 at times more or less.

[24] Ms. Jardine averred that Ray LaBorde liquidated a portion of his shares at the credit union to satisfy this arrangement. She stated that it was always the intention that the monies realized from sale of the shares were to be applied to her half of the mortgage while she would pay the tuition as set off. She did not allege this in her pleadings. Elliot Laborde would therefore not have been aware of this assertion and would not have been able to investigate it and reply in his pleadings. Her witness statement was filed after his.

[25] Ms. Jardine maintained that she sent the money to Ray LaBorde for payment of the mortgage and utilities. She indicated however that she was contacted by a representative from the credit union at times regarding payments which had fallen behind. She surmised that even though she was sending more than half of the mortgage payments to Ray LaBorde that he failed to make the payments. She asserted that he did not do so and that his failure put the mortgage loan in default.

[26] Ms. Jardine stated that as a result she commissioned Jemma King to make the payments on her behalf. She said that she did this every month, that the mortgage was paid but Ray LaBorde did not make his payments. She provided a bundle of 8 receipts in proof of her payments. She indicated that the balance on the mortgage as at March 8 2016 was \$169,965.95.

[27] Tonika gave testimony supportive of her mother. She testified that when the house was being built it was always known that it was going to be a home for three and for her to live whenever she chose to return to Saint Vincent. She described the house as a place filled with treasured memories and claimed that she has spent every vacation there with her father.

[28] She stated that her mother bought most of the contents of the house in Canada and shipped them to Saint Vincent. She said that her mother bought the living room contents, rugs, stereo and turntable, curio and kitchen counters and shipped them from Canada along with the microwave,

cake mixer, blender, sewing machine and transformer. She explained that she helped to pick out the tile colours.

[29] She recalled that after finishing high school and college she went on to University. She explained that her mother was unable to afford it all on her own so her father agreed to pay half of the tuition. She said that her parents agreed for a set off of the tuition payment and as a result she was able to restart school in or about 2012.

[30] She said that her father took ill and she came to visit him in February 2015. She indicated that at no time did he say that he was going to leave the house to Elliot LaBorde. Elliot LaBorde submitted that her evidence was driven solely by greed as exemplified by her admission that she was completely unhappy that her father left his share not to her alone but to his nephew and both daughters.

[31] Jemma King's testimony was very brief. She said that Ms. Jardine used to send money to Ray LaBorde to make the mortgage payments but that he encountered an issue which caused the mortgage to fall into default. She testified that Ms. Jardine asked her to make payments on her behalf which she did from monies that Ms. Jardine sent to her each month. She said she paid those sums towards Ms. Jardine's 'half of the mortgage'.

[32] Elliot LaBorde indicated that after Ray LaBorde died, he obtained details of the repayments from the mortgagee. He averred that his inquiries revealed that Ms. Jardine made 104 payments amounting to \$120,723.61 of which 78 were monthly payments of \$1100.00. He said that Ray LaBorde made 133 payments of \$1400.00 each. He alleged that Ms. Jardine failed to make payments on 33 separate occasions between 2008 and 2015.

[33] He described this as a high level of inconsistency and lack of the required commitment by Ms. Jardine towards clearing the mortgage loans. He opined that this lack of diligence created a substantial build-up of arrears which resulted in Ray LaBorde transferring \$10,553.81 from his

credit union shares to reduce the arrears. Elliot LaBorde claimed that unlike her, Ray LaBorde made his payments faithfully.

[34] Elliot LaBorde and Mrs. LaBorde-Campbell explained that Ms. Jardine made only one payment of \$600.00 towards the mortgage after Ray's death. They testified that this payment was credited to the loan on 28th December 2015. Ms. Jardine did not deny this. I therefore accept this account. Elliot LaBorde and Mrs. LaBorde-Campbell averred that Ray LaBorde contributed significantly more in repayments than Ms. Jardine. They testified that in addition Ray LaBorde maintained the house and land on which it was built and that Ms. Jardine never attended to the property.

[35] Mrs. LaBorde-Campbell attested that she had a very close relationship with her brother Ray and that following the divorce he placed her name on his account at the credit union. She indicated that he discussed with her the problems in his marriage and his financial affairs. She said she was therefore privy to his financial affairs with the credit union. Under cross-examination she accepted that she did not know everything about his financial affairs or about what transpired between him and Mrs. Jardine.

[36] Elliot LaBorde and Mrs. LaBorde-Campbell testified that after the divorce Ms. Jardine continually pressured Ray to transfer the property to Tonika. They said that Ray resisted this and maintained that he had another daughter Masheica Thomas as well as other relatives. Mrs. LaBorde-Campbell recalled that he said that he could not give all his life earnings, sweat and tears to Tonika alone.

[37] Mashieca Thomas testified via video link. She is a student and lives in Trinidad and Tobago. She recalled spending time with her father at his home in Mount Pleasant at Christmas in 2005 when Ms. Jardine and her sister Tonika were visiting from Canada. Ms. Thomas remembered that not all of the rooms in the house were finished at that time.

[38] Ms. Thomas testified that her father worked hard and placed all of his life savings into building and maintaining the house and land on which it was built. She said that she was aware that he used savings and funds from the mortgage to build the house; and that he made substantial repayments towards the loans.

[39] After Ray LaBorde's death, Ms. Jardine began asserting ownership rights over the property. She indicated that she had her lawyer communicate with Elliot LaBorde by letter dated August 7th 2015 asking that he vacate the property. She explained that she did this to secure her interest as legal owner. She stated that Elliot LaBorde responded and claimed that Ray LaBorde had left a Will in which he was appointed executor and named as a beneficiary. She said that her efforts to obtain a copy of the Will were unsuccessful.

[40] Ms. Jardine contended that the question of how the Court should treat inherited property was addressed in the case of **White v White** where Lord Nicholls stated:

'This distinction [between inherited property and property owned before the marriage, on the one hand, and 'matrimonial property', on the other hand] is a recognition of the view, widely but not universally held, that property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called 'matrimonial property'. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property.

Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant factors to be considered.'³

[41] She submitted that in **P v P (INHERITED PROPERTY)** Munby J considered the parties' respective interests in a farm which the husband had inherited and which had been in his family for

³ [2001] 1 AC 596.

generations, and which both parties had spent the 19 years of their married life cultivating and developing, and held as follows:

‘(1) Inherited property was to be taken into account when considering the assets of the parties, but while sometimes the fact that property was inherited might count for little, on other occasions that fact might be of the greatest significance. Fairness might require quite a different approach if the inheritance was a pecuniary legacy that accrued during the marriage than if the inheritance were a landed estate that had been within one spouse's family for generations and had been brought into the marriage with an expectation that it would be retained in specie for future generations. That said, the reluctance to realise landed property had to be kept within limits.

(2) The proper approach was to make an award based on the wife's reasonable needs for accommodation and income, not because that was the principle to be applied to all farming cases, but because of the circumstances of the case, in particular that the bulk of the family's assets represented a farm which had been in the husband's family for generations, and which had been brought into the marriage with an expectation that it would be retained in specie; that although the farm business had been in joint names, the land had been retained in the husband's sole name; that any other approach would compel a sale of the farm, with devastating implications for the husband; and that this approach would meet the wife's reasonable needs. To give this wife more than she reasonably needed for accommodation and income would tip the balance unfairly in her favour and unfairly against the husband. Equally, it would not be fair to limit the wife's claim to the husband's free capital; in the circumstances, the wife's reasonable needs must be met.’⁴

[42] She argued that conversely, in **Mascoll Née Mofford v. Mascoll**, as it pertained to the matrimonial home, the Court noted as follows:

‘[5] The court will examine the former spouses' conduct in relation to the matrimonial home to determine their shared intentions regarding ownership. Those common intentions may be actual, inferred or imputed. In the case at bar, Mr. and Mascoll testified that the property

⁴ [2005] 1 FLR 576, at paras. [35], [37], [38]), [44] and [45].

on which the matrimonial home was built was transferred to Mr. Mascoll by his mother Ina Mascoll, by Deed of Conveyances on 15th October, 2007. Together they built their matrimonial home on it and on 31st January, 2012. Mr. Mascoll conveyed it to Mrs. Mascoll by Deed of Gift.⁵

[43] Ms. Jardine pointed out that in assessing the parties' conduct it was held:

'... they each contributed to the construction of the matrimonial home. They lived there until separated. ... they conducted their affairs in relation to that property as if it was jointly owned by them. During the course of their dealings with that property, they treated it as their matrimonial home, jointly owned by them both. I therefore find that the matrimonial home registered by Deed No. 327 of 2012 is a matrimonial asset. I accept that their respective contributions were even having regard to their general conduct. Accordingly, I hold that both have an equitable 50% interest in the matrimonial home. It follows that Mrs. Mascoll holds 1/2 share in that property in trust for Mr. Mascoll.'⁷

[44] Ms. Jardine submitted that in the circumstances of this case, the land on which the matrimonial home was built was inherited by her in 1989, ten years prior to her marriage to the deceased. She argued that the case of **White v White** establishes that on the face of it, inherited property is not to be regarded as matrimonial property and as such, different considerations ought to apply in determining the respective interests, if any, of each party in such property. She argued that the guiding principle, as outlined in **Mascoll née Mofford v. Mascoll** should be the common intention of the parties which may be actual, inferred or imputed.

[45] She contended further that as this matter concerns an assessment of the interests of each party in the property after the death of one spouse, the considerations outlined under s. 34 of the Matrimonial Causes Act are largely inapplicable, as these considerations largely seek to ensure that the parties maintain the standard of living which they enjoyed during the marriage. She submitted that in the circumstances, a just and equitable outcome is best achieved by assessing the parties' common intentions, as outlined in **Mascoll Née Mofford v. Mascoll** (supra).

⁵ SVGHCV 2016/33, unreported.

[46] Ms. Jardine contended further that the inherited property, being the land owned by her, was never intended to be jointly shared by the parties, but rather, the parties intended only to share an interest in the dwelling house. She contended that this is borne out by a number of indicia including:

1. Throughout their marriage the property was never transferred in their joint names although the mortgage was in both names. She argued that they in fact maintained separate, distinct and quantifiable shares in their assets throughout their marriage.
2. This approach largely conforms with the nature of the marriage in question; the parties lived together for approximately seven (7) years before their marriage and before she migrated to Canada with Tonika. She argued that from the date of the marriage until the divorce she resided primarily in Canada with Tonika.

[47] Ms. Jardine submitted that the financial arrangements between the parties are indicative of an intention that their respective interests in the dwelling house should be separate and equal; that is, it should be owned by the parties in equal halves. In this regard, she said that the arrangements were that:

- (a) Both parties would be jointly responsible for the mortgage payments in relation to the dwelling house which they constructed on the inherited land;
- (b) They would be jointly responsible for their daughter's tuition in Canada. However, as their daughter resided with her, her contributions towards the mortgage payments would be set off by her tuition payments and the deceased would make the full mortgage payments for that period; and
- (c) She would be responsible for the payment of the homeowner's insurance and the land taxes.

[48] Elliot LaBorde refuted her claim that she paid the land taxes. He alleged that Ray LaBorde paid those taxes albeit in Ms. Jardine's name. Ms. Jardine submitted that the property in question was never regarded as their matrimonial home in the ordinary sense. She explained that while both parties contributed to its construction, they did not jointly enjoy the benefits of living in the home as was the case in **Mascoll née Mofford v. Mascoll**. She submitted that from the time of its

construction until the present date, the home was primarily enjoyed by the deceased and Elliot LaBorde while she resided primarily in Canada.

[49] She contended that at all material times, she understood that her contribution to the structure would primarily be for her daughter Tonika Jardine-LaBorde's benefit, should she return to St. Vincent and the Grenadines. Ms. Jardine did not indicate how she arrived at this understanding and significantly she did not aver that this was discussed with Ray LaBorde and agreed with him. Her independent understanding would have had no coercive or binding impact on Ray Laborde.

[50] Ms. Jardine argued that in achieving the fair outcome envisioned in cases such as **White v White** and **P v P (INHERITED PROPERTY)**, the Court must determine whether it was the common intention of the parties that the party who contributed the inherited property should be divested of an asset which she presumed would remain in her family for generations to come. She submitted that in the circumstances of this case, this could not have been their intention.

[51] Ms. Jardine contended that on an examination of the document which purports to be the Last Will and Testament of the deceased, it becomes evident that he himself recognized the separateness of the parties' assets. She submitted that this is reflected in the said document which state:

'I give my 50% interest in the **dwelling house** to my nephew Elliot Laborde for his lifetime. The house is located at Mount Pleasant, Mespo. In the event that the house is sold the proceeds of my 50% share should be divided equally between Elliot and my two daughters, Tonika Jardine-Laborde and Masheika Thomas.

I acknowledge that the other 50% share of the **dwelling house** belong to my ex-wife Yolander Jardine, currently residing in Canada.' [Emphasis added]

[52] Ms. Jardine contended that Ray LaBorde's reference to his '50% interest in the dwelling house' is a clear indication that he understood and agreed that his interest in the said property was limited to the equal contributions which both parties made to the structure erected on her land. She reasoned that Elliot LaBorde's averments in his Amended Defence⁶ which refer to each party's respective contribution towards the mortgage payments are therefore immaterial, because Ray LaBorde, by

⁶ Paragraphs 23 and 29(i)-(ii).

his own declaration, never sought to quantify his interest as exceeding 50% of the value of the dwelling house.

[53] She argued that this conclusion bears even more weight when one considers the fact that the document which purports to be Ray LaBorde's Last Will and Testament was made on March 25, 2015, over four years after the dissolution of their marriage. Ms. Jardine contended that the declarations made in 'this document' paired with the documentary evidence which has been submitted by the parties, showing joint contributions only to the construction of the dwelling house, all conclusively support one position: that Ray LaBorde's estate is entitled to a 50% share in the dwelling house only.

[54] Ms. Jardine reasoned that based on the parties' common intention which may be inferred from their conduct, and which is expressly stated in the document 'which purports to be the Last Will and Testament of the Deceased', they always intended that she would retain her interest in the inherited land and each party would be entitled to a 50% interest in the dwelling house to which they both contributed.

[55] Elliot LaBorde submitted that the mortgage recited that the Society 'agreed with the mortgagors and the principal to lend and advance to the principal' the mortgage sum. He noted that Ms. Jardine claimed that the deceased's estate is entitled to share in the equity of the value of the house, but not the land, while in his dual capacities he asked in his defence and counterclaim for a declaration that the respective shares of deceased and Ms. Jardine are equal.

[56] He argued that Ms. Jardine did not seek ancillary relief in matrimonial proceedings during Ray's lifetime. He submitted that if she had, she would have been met by a benchmark for division of assets from cases such as **Stonich v Stonich**, **P v P**, **Mascoll v Mascoll** and **White v White** which deal with the principles which guide the Court when it exercises its wide discretion under the financial relief provisions of the Matrimonial Causes Act ('MCA'). He contended that they are ancillary relief cases.

[57] He submitted that this case does not involve the MCA, since no party sought divorce or ancillary relief under section 9 or 29 of the MCA. I agree. Mr. LaBorde argued further that **White** is not binding in this jurisdiction because their Lordships' reasoning was based on section 25 of the UK Act which is different from our corresponding section 34. He submitted that in England, the 'tail piece' which requires the Court to place the parties as far as practicable in the financial position they would have been had their marriage not broken down has been removed. He observed that the UK Courts no longer have a statutory statement on the objective of the section and the resulting difference in approach is important.

[58] Mr. LaBorde contended that in **Daniel v Daniel** Webster J. said that a Court in St. Vincent should 'examine the decision in **White v White** very carefully before deciding to follow it.'⁷ He submitted that the principles of law which must be applied in the instant case are those of the actual, inferred or imputed intention of the parties, which while they can seem to be similar, are distinct from and different from the striving for fairness quest that the Court embarks on in ancillary relief matters. He argued that in such cases the Court does not make a determination of the parties' strict property rights.

[59] Mr. LaBorde submitted that the decision in **Stack v Dowden** is instructive. He quoted Baroness Hale who outlined the applicable principles. She stated among other things:

'⁴³ As between married couples, the problem has been addressed (if not solved) by the comprehensive redistributive powers in the Matrimonial Causes Act 1973, if the couple divorce, and in the Inheritance (Provision for Family and Dependants) Act 1975, if one of them dies. ... The 1975 Act also gives some more limited help to the survivor of an unmarried cohabiting couple. (Neither, of course, is of any assistance in third party challenges, for example from other relatives.)'⁸

[60] Baroness Hale added:

'⁶¹ *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

⁷ SVGHMT1999/607, para. 29-30.

⁸ At para. 43.

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, at para 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.’

The passage quoted is very similar to the view of the Law Commission in *Sharing Homes*, A Discussion Paper, para 4.27 on the quantification of beneficial entitlement:

"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."

That may be the preferable way of expressing what is essentially the same thought, for two reasons. First, it emphasises that the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. **Second, therefore, it does not enable the court to abandon that search in favour of the result which the court itself considers fair. For the court to impose its own view of what is fair upon the situation in which the parties find themselves would be to return to the days**

before *Pettitt v Pettitt* [1970] AC 777 without even the fig leaf of section 17 of the 1882 Act.⁹ (Emphasis supplied.)

[61] Elliot LaBorde submitted that Ms. Jardine's argument that the realty is inherited property and must be excluded from division with Ray, is contradicted by the authorities. He pointed out that in **Edwards v Edwards** the Court of Appeal held that the appellant wife was entitled to a beneficial interest in a parcel of land which the husband had acquired prior to the commencement of their relationship, in circumstances where her name was not on the title or mortgage. Thom JA stated:

'... in determining whether there was a shared common intention that both parties would have a beneficial interest in the property, the whole conduct of the parties must be considered. Each case will turn on its own facts.'¹⁰

[62] In response to Ms. Jardine's contention that the property was never regarded as the matrimonial property because it was primarily enjoyed by Ray and Elliot, he submitted that whether a property is the matrimonial home does not depend on where one spends some time but rather on where both parties live together. He contended that while Ray lived all the time in the house and Ms. Jardine lived some time in Canada, when they in fact lived together it was only in the said home.

[63] He argued that her contention that reference in the Will to 'my 50% share in the dwelling house' means that Ray understood that his share was limited to the structure on the land, does not accord with common sense and is a forced view. Elliot LaBorde submitted that Ray was a teacher, not a lawyer and the Will was homemade.

[64] He reasoned that many lay persons do not know that structures attached to land go with or is considered part of the land and that ownership is of the land and not just of the structure on it. He submitted that Ray was merely using layman's language to try to describe what he was bequeathing. He argued that it is for the Court to declare what Ray's interest was, given the 'whole conduct' of both parties from the date of acquisition of the land to the date of his death.

⁹ At para. 61.

¹⁰ ANUHCVP2012/0040, at para. 41.

- [65] Elliot LaBorde argued that it is clear that Ray and Yolander at all material times intended to share the disputed realty equally. In this regard, he observed that they were a couple since high school; she had no discussions with him before her father gave her the land, but she intended to build on it; and Ray operated a shop owned by her father. He submitted that it is not a leap to infer that this couple and her father were far from estranged but in fact worked together for the common familial good; and it is reasonable to infer that it was her intention that he, she or they would build a house on the land given by her father so they could both live there as their home.
- [66] Ms. Jardine's clear testimony is that she intended to build a house on the land. Based on the fact that they approached the acquisition of the home jointly and even involved Ray's mother in the endeavour, it seems reasonable to infer that Ray Laborde and Yolander Jardine were serious about pursuing their relationship as husband and wife. Their agreement to jointly contribute to the repayment of the mortgage debts is tangible proof of this common intention. Therefore, I infer that they pooled their resources as a team to realize their goal of having a home.
- [67] Significantly, Ms. Jardine did not tell Ray that they would jointly own the house but the land was hers alone. Even more fundamentally, how would such an arrangement be given effect to from a practical standpoint? Ms. Jardine did not say. Ray LaBorde's resolute insistence on not parting with his interest to Tonika despite Ms. Jardine's repeated entreaties demonstrates that he had no intention to divest himself of his interest in favour of Tonika or even Ms. Jardine. His posture belies her assertions that their intentions were for separated interest in the house and land as alleged.
- [68] Even more glaring in its absence is any mention of such an understanding in the letters written to Ray LaBorde by Ms. Jardine's lawyer. One would reasonably have expected the inclusion in at least one of the letters of a reminder that he had deviated from the prior arrangement whereby he would only retain an interest in the house. I reject that assertion. It does not make sense.
- [69] Elliot Laborde submitted that they would have had discussions with Eucina LaBorde before they built the house; that she would have assisted them by putting up her house as security for the mortgage. He contended that this is a second example of a parent-in-law helping her/his child and

that child's spouse for the benefit of them both. He reasoned that it is not unusual for parents to assist and help their adult children and their stable partners in this way.

[70] He noted that in **Stack v Dowden** Baroness Hale said that 'context is everything'; and opined:

'69 ... the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; 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. When a couple are joint owners of the home 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 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 share the eventual benefit or burden equally.** The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.'¹¹

[71] Elliot LaBorde submitted that the evidence of early discussions between the couple is bare, but the evidence of the nature of their relations and of the purpose for owning the disputed property is cogent. In this regard he noted that they built it as their home at a time when their relationship was sufficiently close enough for them to commit to a substantial mortgage together. He observed too that while the legal title was vested in Ms. Jardine the beneficial interest was always or at least

¹¹ At para. 69.

from the time they put their names on the mortgage deed, vested in both of them equally. This is a 'significant factor'. I agree.

[72] Mr. LaBorde submitted that they had a young child which signified that this land and house would have been central to their intentions to build their family and life together. He observed en passant that to Ms. Jardine, this did not include Masheica, but clearly it did for Ray. He argued that in this effort they were aided by substantial contributions from mother-in-law and father-in-law; they were both parties to the mortgage with Ray being the main borrower.

[73] Elliot LaBorde argued that when Ms. Jardine sent the signed Deed of Gift for Ray to transfer his share of redemption to Tonika in July 2012, she recited in it that they were equally entitled to the equity in redemption in all of the subject realty. He pointed out that she acknowledged that while the legal interest was vested in the Co-operative Society, Ray was equally entitled to share with her the beneficial interest in all of the realty. He submitted that there was no reduction, exemption, proviso or caveat in the deed of gift.

[74] Mr. LaBorde contended that very little can be ascribed to Ms. Jardine in terms of credibility. He submitted that she was very evasive in answering questions in cross-examination. He submitted that her case was driven by raw greed which was demonstrated when she admitted that she brought the claim because Ray gave his share to Elliot and Masheica and not just Tonika.

[75] He contended that she gave misleading evidence by testifying that the mortgage balance was \$169,965.95 as at March 8 2016. In this regard, he pointed out that since April 27 2017 the Society had informed her¹² that the correct balance was \$29,760.74, but yet in her witness summary signed on 25th August 2017 and filed the same date, she maintained the higher balance. He observed that she also failed to disclose to Court in her witness summary that the huge reduction in the mortgage debt was as a result of the payment of Ray's insurance monies towards the loan after his demise.

¹² As evidenced by the email from Society to vincydove dated Apr. 25 2017; pg. 204 of the trial bundle.

[76] Elliot LaBorde testified that he paid the mortgagee a total of \$140,809.08 which was paid to him after Ray LaBorde's death. He testified that of this amount CUNA Mutual Group paid \$36,498.46, Demerara Mutual Life paid \$4,301.62 and Sagicor paid \$100,000.00. He produced records attesting to this. He submitted that it is trite law that insurance policies are for the benefit of the policy holders and any named beneficiaries only. He argued that to allow Ms. Jardine to have the benefit of that payment would be to unjustly enrich her. He submitted that the Court in looking at all the circumstances and in doing justice to him as executor, would be in no doubt that \$140,000.00 is a disproportionate bonus to Ms. Jardine. I do not disagree with the legal principles highlighted by Mr. LaBorde or the effect of crediting the insurance payout to someone other than the insured beneficiary.

[77] He submitted that her witness summary gave the impression that she had paid more than half of the mortgage payments although this was not the case, and when in reality Ray paid most of the mortgage and far more than her. She stated there:

‘...even though I was sending more than half of the mortgage payment to the deceased, he failed to make the payments’.¹³

[78] Elliott LaBorde argued that Ms. Jardine duplicated the amounts she sent by Western Union not once but six times and only admitted this after prolonged cross-examination on the point. In this regard, he pointed out that Ms. Jardine included among her exhibits, many transfers to someone other than Ray; and misled the Court with documents purporting to show shipments of personalty to Ray when under cross-examination it became clear that many of those shipments were to others.

[79] I accept that these incidents took place. Ms. Jardine's case was hurt by these obvious failings. Her credibility was seriously eroded by them. This undermined her case. I am therefore compelled to accept Elliot LaBorde's version of what took place and I do so.

¹³ At para. 51.

- [80] Elliot LaBorde relied on three legal authorities: **Stack v Dowden**, **Abbott v Abbott**¹⁴ and **Midland Bank Plc v Cooke**¹⁵. He submitted that Baroness Hale outlined several key legal principles in her leading opinion in **Stack v Dowden** and **Abbot v Abbott**.
- [81] Baroness Hale is credited with clearly articulating that the Court must search for the parties' shared intentions, actual inferred or imputed with respect to the property in light of their whole course of conduct in relation to it; pointing out that the law has moved on since **Lloyd's Bank v Rossett** in 1991 in response to changing social and economic conditions; the Court may infer that a common intention trust has arisen even if there is no evidence of actual agreement; that there are pitfalls in taking an arithmetic approach to intention; and that context is supplied by the nature of the parties' conduct and attitudes towards their property and finances.
- [82] Elliot LaBorde submitted that Lord Walker's opinion in that case should also be borne in mind where he stated that 'the Court should not readily embark on the sort of detailed examination of the parties relationship and finances that was attempted' in that case. Rather he encouraged that the wide view should be taken.
- [83] Mr. LaBorde invited the Court to consider that at all material times Ms. Jardine lived in Canada while Ray lived in the house and on the land; that at all material times since 2011 Ms. Jardine had legal advice; that notwithstanding she did not seek division of the property during Ray's lifetime or return of any personalty; despite pressing Ray in 2011 and threatening him to resort to 'other means of settlement' Ms. Jardine neglected and/or refused to resolve the division issue while Ray was alive and within a few weeks after he died she was seeking possession of the house, land and personalty; and the house was maintained by Ray, is a permanent structure and cannot be removed from the land.
- [84] He submitted further that other notable and relevant features of this case are that the mortgage involved 30,914 sq. ft. of land and not the entire 1 acre that belonged to Ms. Jardine; that Ms.

¹⁴ [2007] UKPC 53.

¹⁵ [1995] EWCA Civ 12.

Jardine is bound by the mortgage and the facts and statements set out in it. He pointed out that Ms. Jardine introduced set-off in her witness statement but did not plead it. He argued that this amounts to an ambush. I agree. Ms. Jardine was required to plead any set off. She did not.

[85] Elliot LaBorde argued that set off was not pleaded. He submitted that the falsity was exposed when attention was drawn to Ryerson University customer account which showed that Tonika was just enrolling in year 1 course in 2015. He noted that Ms. Jardine admitted this. Mr. LaBorde argued that Tonika was just beginning College in 2015, the same year Ray died of chronic pancreatitis, malnutrition and severe anemia. He reasoned that Ms. Jardine's allegation that Mr. LaBorde agreed to such set off is hard to believe.

[86] Ms. Jardine submitted that Tonika denied that the set off arrangement was an untruth conjured up by her mother and her and noted too that she knew of the arrangement because when her parents spoke on the phone, sometimes the phone was on speakerphone, so she was able to hear the contents of the conversation. Even if this happened, the Court cannot entertain her belated attempt to introduce it in her witness summary. It will therefore be disregarded.

[87] Mr. LaBorde contended that the Court must also take into account that in March 2016 the mortgage balance was \$169,965.95, yet Ms. Jardine never requested the Society to re-convey the land or any portion of it and keep the mortgage only on the house. He reasoned that this assumes reasonably that if it took nearly \$278,000.00 to build the house in 2004-2005 and it would now be valued more than the present mortgage balance. The evidence revealed that no part of the mortgage has been discharged. Mr. LaBorde's submissions on this point are germane and cannot be ignored.

[88] Elliot LaBorde observed that Ray stated in his homemade Will that his and Ms. Jardine's interest is one half. He submitted that this is important and demonstrates that the deceased considered his interest in the property to be one half. Elliot LaBorde argued that the house would not have been

built without the mortgage, and the mortgage could not have been obtained without Ray's mother putting up one ½ acre of land. This latter submission is speculative. I make no such finding.

[89] Elliot LaBorde contended further that Ray made most of the mortgage repayments totaling \$191,587.25 while Ms. Jardine paid only \$120,723.61. He argued that payment of mortgage is payment of purchase price, i.e. acquisition of property over time. He cited the case of **Callwood v Callwood**¹⁶ in support. The case does in fact illustrate that principle. Mr. LaBorde submitted that Ray LaBorde's greater payments supports an inference that his share was greater than 50%, but if all else fails the court should apply the maxim equality is equity as in **Midland Bank v Cooke**.

[90] This contention seems to me to be diametrically opposed to the statement in **Stack v Dowden** that larger payments will not by themselves result in that payer obtaining a greater interest in the property. Elliot LaBorde acknowledged that a share of 50% is eminently reasonable. Elliot LaBorde submitted that Mrs. Jardine's claim for personalty is stale, without merit and cannot be sustained. In this regard, I note that Ms. Jardine made no claims for any such personalty in the years immediately after the divorce or while Ray LaBorde was alive.

[91] Having not done so, it would be difficult if not impossible to ascertain whether the items she claimed she bought were acquired from community matrimonial funds or were paid for from her own independent resources. Ms. Jardine has not produced any credible conclusive evidence from which the Court can make a decision on those matters. She has not presented any materials from which the Court can reasonably find that such an exercise would bear fruit at this late stage. I bear in mind that Mrs. Jardine appears to have taken a deliberate decision to move on with her life and from all appearances has done so. I am of the considered opinion that the time for her to reconcile and recover any items from the matrimonial home has long passed. I am mindful that she made no reference to such items in her lawyer letters to Ray LaBorde. This suggests to me that she was laying no claim to any such items. In the circumstances her claim for inventory and personalty is dismissed.

¹⁶ BVI App. 7 of 2001.

- [92] Elliot LaBorde argued that Ms. Jardine's contention that Ray's equity extends only to the house is puzzling. He submitted that in our system of law, permanent fixtures go with the land on which they are affixed. This is correct. Ms. Jardine has advanced no opposing legal concept. I am aware of none. In the circumstances, I find that the house and the land on which it was built comprises a single asset, being the matrimonial home of Ray LaBorde and Yolander Jardine.
- [93] Ms. Jardine asserted that Elliot LaBorde had brought in other parties to cultivate the land and was treating it as his own and denying family members' access. She indicated further that there is a 6ft road leading to other lands belonging to her family members and that the land on which the house sits belongs to her solely.
- [94] She submitted that she was never dilatory in her obligations as it related to the mortgage debt, but rather always acted in the best interest of all parties, especially the daughter of the union, as she was always of the intention that the property would be passed to their daughter. She submitted that this was evidenced by her attempts to have the deceased transfer his interest to their daughter.
- [95] Ms. Jardine submitted that Tonika was aware that she bought most of the contents for the house from her direct knowledge of this because she assisted with choosing tile colours for the house. She attacked Elliot Laborde's testimony. She argued that while Elliot LaBorde presented evidence about what he purported were the financial arrangements as between her and Ray Laborde as to the alleged 33 missed payments by her and the alleged arrears, that in cross-examination he indicated that he adduced such evidence to 'show the commitment of his uncle'.
- [96] Ms. Jardine contended that the crux of Elliot LaBorde's testimony suggested that she purposefully neglected to make her portion of payments to the repayment of the mortgage loan. She pointed out that in cross-examination, Elliot LaBorde told the Court, when asked whether he was made aware of all the conversations that she had with the deceased, or was privy to the financial arrangements as it pertained between them, that he replied that he was not aware of all the conversations that they had, nor was he privy to the financial arrangements that they may have discussed.

- [97] Ms. Jardine submitted that he admitted that as it related to the financial issues, he only knew what his uncle, told him. She submitted that during the time of the building of the house and the execution of the referenced mortgage, Elliot LaBorde was residing outside of the jurisdiction, studying in Cuba, and was not always in constant contact with his uncle. Ms. Jardine submitted that it can be concluded from his testimony, that Elliot LaBorde could not properly assist the Court in positively confirming or denying whether she Claimant and Ray LaBorde specifically spoke to each other about certain financial arrangements and reasons for the apparent lack of payment on her part. I agree that neither he nor his sister are in a position to do so.
- [98] Ms. Jardine argued that Elliot LaBorde's knowledge of the financial background of the parties was only limited to what he was told and that he had or has no direct knowledge of the full details of that which occurred between them. This is correct. The Court must take all of the evidence into account. In doing so, it cannot disregard the documentary statements from the mortgagee which Mr. LaBorde produced as executor of Ray LaBorde's estate. They provided a reliable record of Ms. Jardine's and Ray LaBorde's dealings with the credit union which corresponds with Elliot LaBorde's account.
- [99] Ms. Jardine pointed out that during cross-examination, Elliot LaBorde was shown the Last Will and Testament of Ray LaBorde and his attention was specifically directed to the 17th line of the Will, which spoke to the interest that the deceased declared that he had in the dwelling house. Ms. Jardine argued that Elliot LaBorde did not deny that the Will specifically stated that the deceased declared that he had a 50% interest in the dwelling house. It must be pointed out that the language used in the Will is a matter to be taken into account in arriving at a decision in this case. The Court takes into account that the house is of concrete and is affixed to the land and is the subject of an undischarged mortgage.
- [100] Ms. Jardine submitted that contrary to Mrs. LaBorde-Campbell's description of the property as the matrimonial home that it was never to be regarded as in the strictest sense, the matrimonial home. She argued that while 'both parties contributed to the construction of the home, the home was never enjoyed equally by both parties'. She argued that the deceased reaped much benefit from the use of the home than she did, as she migrated to Canada with Tonika. She submitted that even Elliot LaBorde, enjoyed the use of the home, to her prejudice. I harbor no doubt that Mr. Ray

LaBorde and Ms. Jardine built that house as their home and used it in that way. Unfortunately, the marriage did not survive. This did not change the character of the house as their matrimonial home. I find that it was.

[101] Ms. Jardine contended that in any event, she believed that the interest held in the property would then be transferred to her and Tonika should she ever return to St. Vincent. She submitted that this was so evidenced by her unsuccessful efforts to have a deed executed by her and Ray LaBorde, by transferring their interest in the home to their daughter. Her failed attempts prove only that that was her wish but evidently it was not Ray LaBorde's intention and he clearly demonstrated that it was not.

[102] I accept that the legal principles extracted from the line of cases relied on by Mr. LaBorde are the ones which are applicable to the instant case. In arriving at a determination I will apply them to the findings of fact.

[103] Two related issues emerge from the opposing arguments on this point. Firstly, the Court must examine the nature of the claim to ascertain whether any aspect of it has engaged the legal principles governing division of matrimonial property in proceedings ancillary to a divorce. Secondly, what are the legal principles which apply in the circumstances of this case.

[104] Neither Ms. Jardine nor Elliot LaBorde filed ancillary proceedings pursuant to the Matrimonial Cases Act¹⁷ for division of matrimonial property. Ms. Jardine has insisted that neither the subject house nor land constitutes matrimonial property. This posture conflicts with the learning arising from some of the cases she has relied on. In this regard, **White v White** was decided based on the provisions of the English Matrimonial Causes Act and the principles governing division of matrimonial property in the course of ancillary proceedings and in the wake of a divorce.

[105] In the case at bar, Ms. Jardine's claim was framed as a claim for apportionment of their respective interests in a house which was jointly acquired; and as to separation of interests in the land which

¹⁷ Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

supports the house. Her claim for interpretation of a clause in the Will introduced an administration of estate question as contemplated by CPR 67. Mr. LaBorde's counterclaim is grounded in the central assertion that the disputed property was the couple's matrimonial home, the acquisition towards which they both contributed and in which they clearly intended to own equal shares (inclusive of the land).

[106] As indicated earlier, I agree with Mr. LaBorde that the property division questions are to be determined based on the principles enunciated in **Stack v Dowden**¹⁸. In that case, Baroness Hale enunciated several legal principles by which the Court is guided in determining the intention of parties who jointly acquire property whether as married or unmarried couples. They have already been outlined. The learning in **White v White**, **Mascoll v Mascoll** and **P v P** while very instructive in strict ancillary proceedings type cases, are not applicable wholesale in the instant matter. This is because the parties have sought no relief under the Matrimonial Causes Act. The Court cannot very well invoke those provisions to resolve this dispute. The administration issues will be dealt with separately.

[107] Having reviewed the manner in which Ms. Jardine and Ray LaBorde conducted their affairs, it seems that they formed the common intention to merge their lives as far as investing in a matrimonial home. They deliberately and carefully pooled their resources for that purpose. For her part, Ms. Jardine allocated a portion only of her land for that enterprise, thereby evincing an intention to retain full and exclusive control and possession of the part of the land which was not subject to the mortgage. She and Ray LaBorde committed to repaying the loan which was partially secured by Ray LaBorde's mother through her land at Evesham. The couple's repayment plan further illustrated a joint and united approach to acquisition of the property.

[108] Ms. Jardine's acquiescence in this state of affairs for the years of the marriage and well after the divorce suggested that she and Mr. LaBorde intended all along to treat the property as joint and equally owned. There is very little on the evidence which suggests a contrary finding. I do not ascribed any extra credit to either party for any additional payments they made towards the

¹⁸ [2007] UKHL 17.

mortgage, maintenance of the property or payment of taxes. Those are duties usually assume by couples in joint enterprise involving acquisition of property. This case is no different. I find therefore that she and Mr. LaBorde intended to jointly acquire the house as their matrimonial home in equal shares.

[109] It is trite law that anything which is permanently attached to land becomes a part of the real estate. Concrete buildings therefore are recognized in law to be part of the land. The obvious corollary to that concept is that the owner of the building is considered to have a corresponding interest, title and right to the land under the building. I harbor no doubt that Mr. Ray LaBorde at all material times acquired a beneficial interest in the land which is complementary of and inseparable from his interest in the house. I reject Mrs. Jardine's submissions that they can be separated.

[110] I therefore find that Ray Laborde's estate and Yolander Jardine each owns an undivided and equal share in the house at Mount Pleasant, Marriaqua and registered by Deed of Gift 708 of 1989 as described in Deed of Mortgage 1652 of 2004 between the Saint Vincent Union of Teachers Co-operative Credit Union Ltd., Yolander Jardine, Ray LaBorde and Eucina Laborde and a beneficial interest in 50% of the land, on which it was constructed as described in the mortgage.

Issue 2 – Did Ray LaBorde's Will provide for a residuary gift?

[111] Ms. Jardine stated that the Will makes provision for Ray LaBorde's interest to be given to Elliot LaBorde for his lifetime but makes no provision for remainderman. She pointed out that it also makes provision for 'residue'. She asked that the Court provides an interpretation of that provision as to whether it is a residuary gift.

[112] That part of the Will states:

'I acknowledge that the other 50% share of the dwelling house belong to my ex wife Yolanda, currently residing in Canada. After all expenses are paid **any residue should be share for the rest of my family by the executor as he sees fit**'.

The gift made by that provision does not concern Ms. Jardine. It has not relevance to the other issues joined between the parties in this case. It is therefore not relevant for the purposes of those matters. I therefore refrain from providing an interpretation of that provision.

Issue 3 - To what remedies are Yolander Jardine, Elliot LaBorde and Ray LaBorde's estate entitled?

[113] Ms. Jardine claimed for inventory and account of the contents of the house. Elliot LaBorde submitted that when challenged she reneged and said she did not want the tiles, and admitted that some of the things mentioned went to other persons; and that she did not want them back because she cannot take them to Canada. I have already addressed the impracticality of embarking on an inventory exercise and the lack of credible evidence on this issue. I therefore dismiss Mrs. Jardine's claim for such inventory.

[114] Ms. Jardine contended that while on the face of the record, she did not make a number of payments, this was a result of the set off agreement she had as between her and the deceased. She contended that it was agreed that, as a result of their daughter, Tonika Jardine LaBorde living in Canada with her and attending school in Canada, that she would cover the expenses of her schooling, which was to be borne by both parents. She claimed that she and the deceased agreed that while she made the payments for their daughter's schooling, Ray LaBorde would cover her share of the mortgage contribution, thus creating a set off arrangement.

[115] Ms. Jardine submitted that the lack of payment was absolutely not due to lack of interest or negligence on her part, but rather, as a result of a private set off agreement. Having found that Ms. Jardine is unable to rely on set off, she may not avail herself of such a 'defence' at this stage.

[116] She argued that the land, which she inherited was never intended to be owned jointly by her and Ray LaBorde. She argued that at no time was there any transfer of ownership between the two, although there were mortgage transactions and construction of the dwelling home on the land. She submitted that during Ray LaBorde's lifetime, neither party made an effort to jointly own the property and that they each knew that they were to have a distinct interest as it pertained to the inherited land, that being, that she had sole interest and the dwelling house, that the interest in the

dwelling house was to be shared. She argued that this was evidenced in the sharing of the contributions to the mortgage and construction and furnishing of the dwelling house.

[117] Ms. Jardine submitted that further, the interest that each party knew that they had was evidenced in the fact that in the Last Will and Testament of Ray LaBorde, in which he specifically referenced that he wished to give his 50% interest in the dwelling house to Elliot LaBorde. She argued that he then acknowledged that Ms. Jardine also had a 50% interest in the property.

[118] She submitted that Ray LaBorde's Will of is unambiguous and the literal interpretation should be applied as a result. She argued that it is important to note that the deceased wrote this Will, well after he and she had divorced. She reasoned that it would appear that there was no issue in his mind that they indeed had an interest in the dwelling house. She submitted that he made no mention of the property.

[119] Ms. Jardine argued that Elliot LaBorde cannot now come before the Court as executor or in his personal capacity to seek a declaration of a greater interest in the dwelling house, as this was not Ray LaBorde's intention. She contended that furthermore, Elliot LaBorde's suggestion that the fact that the deceased made more payments to the mortgage loan, prima facie, is not compelling enough evidence to show that the deceased's estate should have a greater interest, since his case highlighted that he was not privy to all of the financial arrangements that she had with Ray LaBorde.

[120] I remain mindful that Ms. Jardine mortgaged only a part of the acre. This suggests that she did not want that part of the land to be encumbered by the mortgage. A corollary is that she wanted that part to be kept separate and apart from her joint endeavour with Ray Laborde and Eucina LaBorde. She did not comment on this during her testimony when she realistically would have been expected to do so. I find that this goes towards Elliot LaBorde's contentions that she and Ray embarked on the project to build a matrimonial home jointly with the intention that they be equal beneficial owners in it, inclusive of the land. This accords with usual practice and the law.

[121] She stated that if the Will is successfully probated that she claimed an order for sale of the property (subject to mortgage) and for the shares to be distributed after a determination of the interest of Ray LaBorde's estate. It appears that Elliot Laborde has adopted a similar posture.

[122] In view of all of the foregoing and in light of the findings of fact, I dismiss Yolander Jardine's claim. It is trite law that insurance policies are for the benefit of the policy holders and any named beneficiaries only. To allow the claimant to have the benefit of that payment would be to unjustly enrich her. The Court in looking at all the circumstances and in doing justice to the 1st defendant would be in no doubt that \$140,000.00 is a disproportionate bonus to Ms. Jardine.

[123] I find that Yolander Jardine and Ray LaBorde's estate:

- (a) are the beneficial owners of 30,914 sq. ft. of land and house at Mount Pleasant, Marriaqua and registered by Deed of Gift 708 of 1989 as described in Deed of Mortgage 1652 of 2004 between the Saint Vincent Union of Teachers Co-operative Credit Union Ltd., Yolander Jardine, Ray LaBorde and Eucina Laborde ('the referenced property'); and
- (b) each owns and is entitled to a net share of 50% in the referenced property including the house constructed on it, less
 - i) in Ms. Jardine's case, the amount of \$140,809.08 paid by Mr. Elliot LaBorde towards the mortgage, being proceeds from Ray LaBorde's insurance policies; and
 - ii) payment of the licensed valuator engaged pursuant to this order.

[124] In the circumstances, the parties are more likely to obtain their respective shares in the property if a sale is ordered. Accordingly, Elliot LaBorde is charged with arranging for a valuation of the referenced property to be conducted within 60 days of today's date, by a licensed property valuator agreed to by the parties. The referenced property is to be offered for sale on the open market between October 1, 2018 and December 31, 2018 by public auction or private treaty at a price as close as possible to the value ascribed in the valuation report.

[125] Sale of the property is to be attempted as often as necessary until it is sold, right of first refusal reserved to Ms. Yolander Jardine, or Mr. Elliot LaBorde as executor of Ray LaBorde's estate. The Registrar is to effect conveyance, transfer and registration of title. The proceeds of the sale are to be divided equally between Ms. Yolander Jardine and Mr. Elliot LaBorde as executor of Ray LaBorde's estate; after the appropriate adjustments are made to credit Ray LaBorde's estate with the insurance payout and after all expenses related to the sale of the property have been fully satisfied. I make no declaration or other order is made in respect of the clause in Ray LaBorde's Will which refers to 'residue'.

Costs

[126] Ms. Jardine initiated action against Mr. Elliot LaBorde in her personal and representative capacities. Although he is only one person, he had to defend this claim on two fronts. As the successful party on both accounts, he is entitled to recover his separate costs in his personal capacity and as executor. Costs are payable on the prescribed scale. Ms. Jardine is required to pay him prescribed costs of \$7,500.00 not only in his personal capacity but also as executor of Ray LaBorde's estate, pursuant to CPR 65.5 (2) (b), with the result that he recovers \$15,000.00 in sum.

ORDER

[127] It is ordered:

1. Yolander Jardine's claim is dismissed.
2. Judgment is entered for Elliot LaBorde in his personal capacity and as executor of Ray LaBorde's estate.
3. Yolander Jardine and Ray LaBorde's estate:
 - (a) are the beneficial owners of 30,914 sq. ft. of land and house at Mount Pleasant, Marriaqua and registered by Deed of Gift 708 of 1989 as described in Deed of Mortgage 1652 of 2004 between the Saint Vincent Union of Teachers Co-operative Credit Union Ltd., Yolander Jardine, Ray LaBorde and Eucina Laborde ('the referenced property'); and

- (b) each owns and is entitled to a net share of 50% in the referenced property including the house constructed on it, less
 - i) in Ms. Jardine's case, the amount of \$140,809.08 paid by Mr. Elliot LaBorde towards the mortgage, being proceeds from Ray LaBorde's insurance policies; and
 - ii) payment of the licensed valuator engaged pursuant to this order.
- 4. Elliot LaBorde shall arrange for a valuation of the referenced property to be conducted within 60 days of today's date, by a licensed property valuator agreed to by the parties.
- 5. The referenced property is to be offered for sale on the open market between October 1, 2018 and December 31, 2018 by public auction or private treaty at a price as close as possible to the value ascribed in the valuation report obtained pursuant to sub-paragraph 4 of this order. Sale of the property is to be attempted as often as necessary until it is sold, right of first refusal reserved to Ms. Yolander Jardine, or Mr. Elliot LaBorde as executor of Ray LaBorde's estate.
- 6. The Registrar is to effect conveyance, transfer and registration of title.
- 7. The proceeds of the sale are to be divided equally between Ms. Yolander Jardine and Mr. Elliot LaBorde as executor of Ray LaBorde's estate; after the appropriate adjustments are made in accordance with sub-paragraph [3] of this Order and after all expenses related to the sale of the property have been fully satisfied.
- 8. No declaration or other order is made in respect of the clause in Ray LaBorde's Will which refers to 'residue'.
- 9. Yolander Jardine shall pay prescribed costs of \$7,500.00 to Elliot LaBorde in his personal capacity and to Elliot LaBorde as executor of Ray LaBorde's estate, pursuant to CPR 65.5 (2) (b).

[128] The written submissions filed by the parties were quite helpful. I record my thanks to them for their assistance.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar