

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2013/0273

BETWEEN:

RUBENA WARD

Claimant

and

SUZETTE RAWLINS

Defendant

Appearances:-

Mr. Nassibou Butler with Ms. Indira Butler for the claimant.
Ms. Miselle O'Brien for the defendant.

2017: October 20th

JUDGMENT

- [1] **WARD, J.:** The claimant is the widow and sole Executrix of the estate of Lenford Ward who died on 2nd October, 2013. The testator and the defendant were involved in an intimate relationship for a number of years, commencing in or about 1982 and which continued until 2011. This relationship produced a son, Adrian, who was born in 1984. In July 1989 Adrian began residing with the testator at his King Street home. Later that year, the defendant also moved in with the testator and their son at King Street. They eventually moved to a property situated at West Farm, Trinity which had been acquired in or about 1991. The defendant's relationship with the testator ended in December, 2011. He vacated the West Farm property and married the claimant, with whom he had also been involved in an intimate relationship for several years, on Christmas eve. He then moved into the King Street property where the Claimant had resided since 1991.

- [2] The property that gives rise to the present litigation is the West Farm property. In 1990, the testator became interested in purchasing the West Farm property. It was an old estate with two houses in varying degrees of disrepair sitting on it. The sale price was \$150,000.00.
- [3] According to the claimant, the testator told her of his desire to purchase the property and she loaned him the sum of \$15,000.00 in order to meet the 10% deposit requirement and thereafter advanced loans totaling \$124,071.61 to assist with the upgrade and maintenance of the property.
- [4] The defendant contradicts this account. She claims that in or about October, 1990 the testator informed her about the property and took her to view it. She claims that he informed her that he wanted them to purchase the property as their family home. After some discussion they agreed to do so. The purchase price was \$150,000.00.
- [5] They jointly applied to the National bank for a mortgage loan of \$120,000.00 to purchase the property. They were required to deposit 20 % of the purchase price or \$30,000.00 in order to secure approval for the mortgage loan. At the time, the defendant was employed as head of the house keeping department at Jack Tar Hotel earning approximately \$1,000.00 per week. The defendant says she contributed \$20,000.00 to this deposit.
- [6] The mortgage was jointly executed by the testator and the defendant. After the purchase, the legal title to the property was registered in their joint names by virtue of Certificate of Title dated 10th June, 1991.
- [7] In the ensuing years, construction, improvements and renovations were made to the property. This included the demolition of the derelict house on the property in 1997 and its replacement with a two bedroom house which was rented out for US\$800.00 per month commencing in 1999.
- [8] In 2002, the defendant and the testator obtained a loan from Scotiabank in the sum of \$335,000.00 which was used to pay off the outstanding balance owed to National Bank and to make renovations and improvements to the property.

- [9] The claimant asserts that over a number of years she loaned the testator various sums of money to assist in the improvement, upkeep and maintenance of the property.
- [10] The defendant contends that prior to taking the mortgage with National Bank she and the testator agreed that that he would make the monthly mortgage payments while she would take care of all the other monthly expenses in relation to the property, the home and their son. She maintains that she has made and continues to make significant financial and non-financial contributions to the construction, improvement and maintenance of the property.
- [11] By Fixed Date Claim Form the claimant seeks the following declarations and orders:
- 1) A Declaration that the claimant as the Executrix of the will of Lenford Ward deceased and on behalf of his estate is entitled to a beneficial interest of 80% (or such greater portion as the Court deems just) of the said property;
 - 2) A Declaration that the claimant personally and in her own right is entitled to be reimbursed in the sum of \$124,071.61 consisting of monies expended by her in the purchase, improvement, maintenance and upkeep of the property at West Farm aforesaid prior to, during and after the marriage of the claimant and the Testator;
 - 3) A Declaration that all furniture, household goods, appliances and fixtures in the unoccupied house of the said property belong to and form part of the estate of the Testator;
 - 4) A Declaration that the household goods, furniture, appliances and fixtures in the occupied apartment of the said property belong to and form part of the estate of the Testator;
 - 5) A Declaration that the Claimant as Executrix of the will of Lenford Ward deceased and on behalf of his estate is entitled to such share of

the rent, income and profits of the property collected by the defendant since the death of the Testator;

- 6) An Order that the claimant personally and in her own right be reimbursed the sum of \$124,071.61 together with interest thereon;
- 7) An Order that a valuation of the said property be obtained from a valuator to be agreed between the parties and in the absence of an Agreement by a valuator appointed by the court.;
- 8) An Order for the sale of the property, and after payment of the balance on the loan due to Bank of Nova Scotia and reimbursement of \$124,071.61 due to the claimant personally and in her own right, the net proceeds of sale be distributed between the claimant as executrix of the will of the Testator and the defendant in shares determined by the court;
- 9) An Order that the defendant do deliver up to the claimant as the Executrix of the will of the Testator and on behalf of the Estate, all furniture, household goods, appliances and fixtures in the unoccupied house and the occupied apartment of the property;
- 10) An Order that the defendant do deliver to the claimant as Executrix of the will of the Testator, a set of keys and the code for the remote gate of the property.

[12] The defendant counterclaims and seeks the following declarations and orders:

1. A Declaration that Suzette Rawlins and Lenford Ward were the joint legal and beneficial owners as joint tenants of the property;
2. A Declaration that upon the death of Lenford Ward Suzette Rawlins became the sole legal and beneficial owner of the said property;
3. A Declaration as to the legal and beneficial interest of the defendant in the motor vehicle with registration number P2336.

4. An Order that the said motor vehicle be sold and the net proceeds of sale be shared between the Estate of Lenford Ward and the defendant;

Issues:

[13] Several issues arise for resolution:

- (i) Whether the defendant and the testator held the West farm Property as joint tenants or tenants in common;
- (ii) If as joint tenants, whether the testator severed the joint tenancy during his lifetime;
- (iii) If as tenants in common, in what shares did they hold the beneficial interest;
- (iv) Whether the defendant is liable to repay to the claimant for monies loaned to the testator to assist in upgrade and maintenance of the property;
- (v) Whether the household goods, furniture, appliances and vehicle form part of the testator's estate.

Issue 1: Joint tenancy or tenancy in common?

[14] The claimant does not dispute that the defendant has a beneficial interest in the property. The claimant contends that the beneficial interest is not equally held. The onus is on the claimant to establish that the common intention of the defendant and the testator when registering the property in their joint names or thereafter was that they should hold the property otherwise than as beneficial joint tenants.

[15] As it seems to the court, the central issue for resolution is whether the defendant and the testator held the property as joint tenants or tenants in common. The question here is, given that the property was registered in the joint names of the defendant and the testator with no express declaration of their beneficial interests, how is their beneficial interests to be determined?

- [16] It is a settled general principle that a conveyance into joint names indicates both legal and beneficial joint tenancy unless the contrary is proved.¹ As Lord Hope explained in **Stack v Dowden**² in this context, joint beneficial ownership means that the shares are presumed to be divided between the beneficial owners equally. In a case of joint legal ownership, the onus of rebutting this presumption rests on the person seeking to show that the beneficial interests are divided other than equally.
- [17] However, it is also settled that a joint tenancy in equity is rebutted where the legal owners have provided the purchase money in unequal shares: **Malayan Credit Ltd v Jack Chia-MPH Ltd**.³
- [18] In **Westdeutsche Landesbank Girozentrale v Islington London Borough Council**,⁴ Lord Browne Wilkinson illustrated the proposition thus:
- “Where A... pays (wholly or in part) for the purchase of property which is vested ...in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the...property is held...in shares proportionate to their contribution.”
- [19] The court’s enquiry must be geared towards discovering the parties’ shared intention with respect to the property in light of their whole course of conduct in relation to it.
- [20] A variety of factors may illuminate the parties’ true intentions. A non-exhaustive list of such factors was enumerated by Baroness Hale in **Stack v Dowden**. These include: the parties’ respective financial contributions towards the acquisition of the property, both initially and subsequently; the reasons why the home was acquired in their joint names; the purpose for which acquired; the nature of their relationship; how the parties arranged their finances, whether separately or jointly or a combination of both; how they discharged the outgoings on the property and their other household expenses.

¹ *Stack v Dowden*, [2007] UKHL 17 at para. 58.

² [2007] UKHL 17 at paragraph 4

³ [1986] 1AC 549

⁴ [1996] AC 669 at 708A

[21] As Baroness Hale enjoins us to bear in mind:

“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 where 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 share the eventual benefit or burden equally...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.” (Emphasis supplied)⁵

Approach to quantification of beneficial interest

[22] Where the court is satisfied that a party has a beneficial interest in the property, the next task is to quantify that beneficial interest.

[23] In seeking to assess the beneficial interest of the parties I am guided by the dicta in **Stack v Dowden** that:

The question in joint names cases is not simply what is the extent of the parties’ beneficial interests but did the parties intend their beneficial interest to be different from their legal interests? And if they did, in what way and to what extent?” (At para. 66)

[24] The court will usually have to furnish the answer to this question by drawing inferences from the subsequent conduct of the parties.

[25] In this case, there is no evidence that at the time of acquisition of either property the parties discussed or adverted their minds to how the beneficial interests in the properties would be shared.

[26] Accordingly, the first task is to determine how the beneficial interest was held at the date of acquisition; the second: to consider the position at the date of hearing by identifying and examining what subsequently transpired between the parties

⁵ Ibid, para. 69.

and deciding whether they justify a change in the way in which the beneficial ownership is held.

[27] **Stack v Dowden**⁶ establishes that in the absence of any relevant evidence other than the fact that the property, acquired as a home for the legal co-owners, is in joint names, the beneficial ownership will also be joint, so that it is held in equal shares.

[28] Where the only additional relevant evidence to the fact that the property has been acquired in joint names is the extent of each party's contribution to the purchase price, the beneficial ownership at the time of acquisition will be held in the same proportions as the contributions to the purchase price. The court is mindful of dicta that "*property is often acquired over time, so that payment of mortgage instalments is the equivalent of payment of the purchase price.*"⁷

[29] As the authorities recognize, the fact that the ownership of the beneficial interest is determined at the date of acquisition does not mean that it cannot alter thereafter.

[30] In **Stack v Dowden**, Lord Neuberger opines thus:

"It seems to me that "compelling evidence" ...is required before one can infer that, subsequent to the acquisition of the home, the parties intended a change in the shares in which the beneficial ownership is held. Such evidence would normally involve discussions, statements or actions, subsequent to the acquisition, from which an agreement or common understanding as to such a change can be properly inferred." (At para. 139)

[31] Lord Neuberger seemed further prepared to accept that, consistent with the resulting trust analysis, where one party repays more of the mortgage advance, "equitable accounting" might be invoked to adjust the beneficial interest.

Application to Facts

[32] Applying the foregoing legal principles, a presumption arises that a legal and beneficial joint tenancy was created by the registration of title to the property in the

⁶ Ibid., p. 3.

⁷ See *Stack v Dowden*, para 57.

joint names of the defendant and the testator. The onus is on the claimant to rebut this presumption given that she asserts that the beneficial interest in the property is unequally held.

[33] The whole course of dealings between the parties fall to be examined in order to determine whether it was the parties' intention that their beneficial interests should differ from their legal interest.

[34] Having surveyed the evidence, the court makes the following findings of fact.

Contribution towards purchase price:

[35] The claimant lent the testator \$15,000.00 to fulfil the requirement for a 10% deposit on the purchase price. However, in order to secure a mortgage loan in the sum of \$120,000.00 for the purchase of the property, the National Bank required a cash deposit of 20% (\$30,000.00) of the purchase price. The defendant contributed \$20,000.00 of this amount.

[36] I do not find, as invited by the claimant, that the defendant's credibility is necessarily an issue because the defendant says that the deposit required to purchase the property was \$30,000.00 when in fact it was \$15,000.00, as confirmed by the agent for the vendor and the production of the receipt for the deposit. The parties are speaking about two different transactions. The \$15,000.00 advanced by the claimant to the testator represents the 10% deposit that the testator told her was required to seal the purchase agreement; the \$30,000.00 which the defendant contributed towards was to secure approval of the mortgage loan.

[37] While the purchase price was contributed in unequal shares, I am mindful that the defendant and the testator were jointly liable for the mortgage and so the amount of the contribution to the purchase price is less important than would have been the case if the property were solely in the name of the testator. The court must be astute to guard against what Baroness Hale described as the pitfalls in an arithmetical approach to ascertaining the parties' common intention.

- [38] The evidence of their joint liability for the mortgage is cogently established by the evidence that the memorandum of mortgage was executed in the names of both the defendant and the testator and the mortgage was serviced via a chequing account, No. 29092, in the name of the testator into which the defendant and the testator deposited funds.
- [39] After the mortgage was refinanced with Scotiabank in 2002, the defendant's salary, or at least part thereof, was paid into a joint account, No. 10000477, held by her and the testator. Records from her employers and the bank confirm this. The monthly mortgage payment of \$3,298.88 was deducted from this account. It is also established that as at 2013, the defendant contributed 21% to the total monthly commitments of the parties via the said joint account held at Scotiabank.
- [40] The claimant relies on exhibit RW/6 and RW/9 to say that the testator was solely responsible for paying the mortgage via the chequing account while the defendant merely serviced a personal loan of \$15,000.00. In answer, the defendant explained that she also contributed to the payment of the mortgage by deposits to a joint account held at Scotiabank and that rental income of US\$800.00 from an apartment on the property was also deposited into that joint account to meet the mortgage.
- [41] RW/6 is a letter from the St. Kitts-Nevis-Anguilla National Bank indicating that loan No. 5939/96 for \$256,000.00 in the name of the defendant and the testator was being serviced from the chequing account in the name of the testator. It further states that another loan, No. 7399/99 for \$15,000.00 in the defendant's name, but guaranteed by the testator, was being serviced by the defendant. The defendant claims that the loan of \$15,000.00 was taken to assist with construction and further renovations to the property. The defendant is not able to refute this evidence and I accept it as true.
- [42] RW/9 is a document from Scotiabank. It details the respective contributions of the defendant and the testator to the monthly mortgage loan payment; a Scotia Plan Loan; add-on charge and monthly insurance payment; and a monthly payment towards a line of credit extended by Scotiabank. From this document, it seems

clear that all of these expenses, including the mortgage, were being serviced by both the defendant and the testator.

- [43] I am not persuaded that these documents support the claimant's contention that the testator alone was servicing the mortgage.

Purpose for which acquired/transferred in joint names.

- [44] I accept the defendant's evidence that this property was acquired with the intention that it should be their home pursuant to discussion and agreement between her and the testator. This is a reasonable inference based on the fact that upon its acquisition the defendant, the testator and their son moved into the property very shortly thereafter. Immediately before this, they had been residing together as a family unit at the testator's King Street property. They cohabited for approximately 21 years and, with their son, lived as a family unit.

Organisation of finances, outgoings and household expenses.

- [45] The defendant and the testator serviced the mortgage held with National Bank by depositing their monies into one chequing account No. 29092 owned by the testator but to which the defendant was added as a signatory in 1989. There is evidence from the defendant's former employers that the defendant's wages were assigned and deposited into this account. I accept the defendant's evidence that when she was made redundant in 1994 by her first employer, Jack Tar Village, her redundancy payment of approximately \$32,000.00 and notice and vacation payment of \$11,000.00 were deposited into the said account. I am further satisfied that these funds were utilized to service the mortgage and other household expenses.
- [46] In 2002, the defendant and the deceased jointly applied for a loan from Scotiabank in the sum of \$335,000.00. The stated purpose of this loan was said to be to pay off the National Bank, consolidate debts and to purchase a used vehicle. After the mortgage was refinanced with the Scotiabank, the defendant's salary was paid into a joint account, No. 10000477, held by her and the testator. Records from her

employers and the bank confirm this. The monthly mortgage payment of \$3,298.88 was deducted from this account.

[47] It is also established that as at 2013, the defendant contributed 21% to the total monthly commitments of the parties via the said joint account held at Scotiabank. I am satisfied that the monies deposited into this account were also used to meet household expenses and expenses in relation to the family. I find that the claimant is in no position to refute these assertions.

[48] The claimant admitted that she stopped depositing money into this account in 2012 because the testator had married the claimant in December, 2011.

[49] The evidence of how the parties discharged outgoing and household expenses establishes that the defendant and the testator were jointly responsible for paying all loans in relation to the property; they were both responsible for payment for a line of credit extended by Scotiabank. They pooled their resources into one account at both National Bank and Scotiabank. These monies were used to repay loans in the names of the testator and to meet other expenses.

[50] In summary, I prefer and accept the defendant's evidence. I find that the parties 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.

[51] Having examined the evidence relating to their course of dealings both at the time of and subsequent to the acquisition of the property, the court considers that in light of the parties' conduct, they must have intended that their beneficial interests should be no different from their legal interests.

Issue (ii) - Was the joint tenancy severed?

[52] It is recognized that a joint tenant may sever the joint tenancy thus converting it into a tenancy in common and thereby avoiding the consequences of *ius accrescendi*. Severance of a joint tenancy may typically be effected by the act of a

joint tenant operating upon his own share; by mutual agreement and by course of dealing or mutual conduct: **Williams v Hensman**⁸.

[53] The learned author of **Commonwealth Caribbean Property Law**, 4th edition, advances the proposition that the formal commencement of litigation concerning a joint tenancy is '*an act operating on the share of the joint tenant commencing the proceedings notwithstanding that the proceedings could always be abandoned or discontinued.*' The cases of **Re Draper's Conveyance**⁹ and **Harris v Goddard**¹⁰ are cited as authorities for this proposition.

[54] In this case, evidence has been adduced that in November, 2012 the defendant instituted litigation concerning the property in which she sought declarations and averred on oath that the property was held in equal shares while the testator averred that they were unequally held. These are properly proved previous statements of the defendant relating to the property and are admissible.

[55] Further, the claimant claims in her capacity as Executrix of the will of the deceased. The defendant has admitted to having been supplied a copy of the will dated 8th February, 2012. In cross-examination she was shown a copy of the will and identified it.

[56] She admitted under cross-examination that Exhibit RW/9" was obtained at a time when she and the testator were in dispute in relation to the property.

[57] In my view, the foregoing acts and conduct of the parties were effective to constitute severance so as to convert a joint tenancy into a tenancy in common as they manifest an intention inconsistent with a continued joint tenancy.

Issue (iii) – How is the beneficial interest held?

[58] Having determined that the joint tenancy was severed, the issue is whether the defendant and the claimant as Executrix of the will and on behalf of the estate hold the beneficial interest equally or in unequal shares. For the reasons discussed

⁸ (1861) 70 ER 862 at 867

⁹ [1967] 3 All ER 853, 857

¹⁰ [1983] 3 All ER 242, 246

above, I hold that upon severance the parties held the property as tenants in common in equal shares. Accordingly, the claimant as Executrix of the will and on behalf of the estate is entitled to a beneficial interest of 50% of the property.

Issue (iv): Whether the defendant is liable to repay \$124,071.61 to the claimant for monies loaned to the testator to assist in the purchase, improvement, maintenance and upkeep of the property at West Farm.

[59] The claimant has produced receipts that cogently demonstrate that she advanced monies to the testator which she says were loans to assist in the purchase, improvement, maintenance and upkeep of the property at West Farm. I accept that she lent the testator money. However, I also find that the defendant was not privy to any arrangement or agreement the claimant and the testator may have had in relation to these loans and, in particular, that the claimant should be reimbursed for all monies expended on the property when the property was sold.

[60] I accept the submissions of counsel for the defendant that the defendant, not being privy to any contract or agreement that may have existed between the claimant and the testator regarding these funds, she cannot take the burden. I adopt the succinct formulation of the principle as set out in **Halsbury's laws of England**¹¹:

“...[T]he doctrine of privity of contract is that, as a general rule at common law a contract cannot confer rights or impose obligations on strangers to it, that is, persons who are not parties to it.”

[61] I would hold that the claimant is not entitled in her personal capacity and in her own right to recover the sums claimed. Any such claim would be against the estate of the testator.

¹¹ 4th Edition, Vol. 9(1)

Issue (v): Whether the furniture, household goods, appliances and fixtures in the two houses on the property and the vehicle form part of the estate of the testator.

[62] The claimant is in possession of a Suzuki Vitara motor vehicle Registration No. P2336. The evidence establishes that the vehicle was purchased with a loan obtained from Scotiabank for which the defendant and the testator were jointly liable and which they both serviced via the joint account at Scotiabank. The beneficial interest in the vehicle was equally shared.

[63] As it relates to household goods, furniture and appliances, with the exception of 1 black and white dining table with 6 matching chairs; 1 white wooden coffee table; 2 pink polka dot sofas and 1 pink polka dot pull-out sofa bed, which I find were gifts from Shirley and Carolyn Sherriff to the testator, the remaining items were beneficially owned by both parties who contributed to their acquisition.

[64] In the premises, I make the following declarations and orders:

1. The claimant as the Executrix of the will of Lenford Ward deceased and on behalf of his estate is entitled to a beneficial interest of 50% of the property situated at West Farm, in the Parish of Trinity and registered in Register Book Q2 Folio 136 of the Register of Titles for the Island of St. Christopher.
2. The claimant as Executrix of the will of the testator and on behalf of the estate is entitled to half share of the rent, income and profits of the property collected by the defendant since the death of the testator.
3. Save for 1 black and white dining table with 6 matching chairs; 1 white wooden coffee table; 2 pink polka dot sofas and 1 pink polka dot pull-out sofa bed in the unoccupied house, the defendant is the joint beneficial owner of the household goods, appliances, furniture and fixtures in the unoccupied house and the occupied apartment of the said property.
4. The defendant is the joint beneficial owner of motor vehicle P2336.

5. A valuation of the said property is to be obtained from a valuator to be agreed between the parties and, in the absence of agreement, by a valuator appointed by the Court.
6. The said property is to be sold and, after payment of the balance of the loan due to Scotiabank, the net proceeds of sale be distributed equally between the claimant as Executrix of the will of the testator and on behalf of his estate and the defendant.
7. The defendant is to deliver up to the claimant as Executrix and on behalf of the estate 1 black and white dining table with 6 matching chairs; 1 white wooden coffee table; 2 pink polka dot sofas and 1 pink polka dot pull-out sofa bed in the unoccupied house;
8. The remaining household goods, appliances, furniture and fixtures in the unoccupied house and the occupied apartment of the said property are to be sold and the net proceeds of sale shared equally between the estate of Lenford Ward and the defendant.
9. The said vehicle is to be sold and the net proceeds of sale shared equally between the estate of Lenford Ward and the defendant.
10. Given that both parties have succeeded on particular issues in the proceedings, each party to bear its own costs.

Trevor M. Ward, QC
Resident Judge

By the Court

Registrar