

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2013/0323

BETWEEN:

ROBERT ALEXANDER LIBURD

Claimant

and

LYNDA-LOU LOUISE LIBURD

Defendant

Appearances:-

Ms. Miselle O'Brien of Counsel for the Claimant

Ms. Marsha Henderson of Counsel for the Defendant

2017: May 5

JUDGMENT

- [1] **WARD, J.:** The claimant and the defendant were married on 10th December, 1988. The union eventually hit rocky ground and culminated in divorce on 14th November, 2011 and made absolute on 15th December, 2011.
- [2] During the marriage the claimant was a police officer in the Royal St. Kitts Nevis Police Force. When first married he held the rank of Sergeant but subsequently rose to the rank of Assistant Commissioner of Police.
- [3] The defendant was self-employed; initially as a hair dresser and later operating an itinerant ice-cream vending business and also seasonally making and selling masks and faux floral arrangements.
- [4] During the marriage, two properties were purchased. The first comprised land with a house thereon situated at 37 Ponds Extension, Basseterre ("the Ponds

property"). This was acquired in or about 1993. The second property also comprised house and land situated at Conaree Village and known as "The Round Cottage". This second property was acquired in 2005.

- [5] Both properties were obtained by means of mortgages held with the St. Kitts-Nevis-Anguilla National Bank Ltd and the Bank of Nova Scotia, respectively.
- [6] The purchase price for the Ponds property was funded partly by a bank loan from St. Kitts-Nevis-Anguilla National Bank and partly by a loan from the claimant's brother and a family friend.
- [7] The purchase price for the Round Cottage was obtained via a loan taken from the Bank of Nova Scotia in the names of the claimant and defendant. Of this sum, \$10,310.00 was used to pay off the outstanding balance remaining on the mortgage in relation to the Ponds property.
- [8] The defendant is currently in occupation of the Ponds property.
- [9] The legal title to both properties was held in their joint names.
- [10] The claimant seeks a declaration that the Ponds property and the Round Cottage property are owned by the parties jointly in shares of 80% and 20% to the claimant and defendant respectively. The defendant contends that the beneficial interest in both properties is held in equal shares.

The issue for resolution is whether the beneficial ownership of the two properties differs from the legal joint ownership

- [11] The starting point derives from the general principle that a conveyance into joint names indicates both legal and beneficial joint tenancy unless the contrary is proved. The onus of rebutting this presumption rests on the person seeking to show that the beneficial ownership is different from the legal ownership.

[12] The court's enquiry is geared towards discovering the parties' shared intention with respect to the properties in light of their whole course of conduct in relation to it.

[13] 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**.¹ These include, the parties' respective financial contributions towards the acquisition of the property, both initially and subsequently; 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; the reasons why the home was acquired in their joint names; the purpose for which acquired; and the nature of their relationship.

[14] 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."

Approach to quantification of beneficial interest

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

[16] 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*

¹ [2007] UKHL 17

beneficial interest to be different from their legal interests? And if they did, in what way and to what extent?” (At para. 66)

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

Application to Facts

- [18] The foregoing legal principles will be applied to the facts the court has found on the evidence presented in this case.
- [19] 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.
- [20] 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 and deciding whether they justify a change in the way in which the beneficial ownership is held.
- [21] **Stack v Dowden**² 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.
- [22] 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.
- [23] The burden is on the claimant to show that the common intention, when taking a conveyance of the properties into their joint names or thereafter was that they should hold the property otherwise than as beneficial joint tenants.

² Ibid., p. 3.

- [24] The factors that are relevant to the resolution of this question and in respect of which I have made findings of fact are as set out below.

Financial contributions to the acquisition of the property

- [25] The Ponds property was purchased as the matrimonial home for the sum of EC\$ 175,000.00. This was financed by a loan from St. Kitts-Nevis-Anguilla National Bank in the sum of EC\$ 125,000.00 and the balance by a loan of EC\$50,000.00 from a family friend and the claimant's brother.
- [26] The defendant does not seek to say that she contributed equally to the purchase price at the time of the acquisition of this property. Her claim is that the arrangement was that since she was self-employed and the claimant earned a steady income as a police officer, the mortgage payments would be made from his salary while she would be responsible for the food, utilities and all expenses relating to the children of the family.
- [27] The claimant accepts that the defendant contributed to the household by paying for music classes for their son, for cable and telephone bills and for household items obtained on hire purchase.
- [28] There is clear authority for the proposition 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
- [29] 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."

³ [1986] 1AC 549

⁴ [1996] AC 669 at 708A

How the parties discharged the outgoings on the property and their household expenses

- [30] The court accepts the claimant's evidence that the mortgage in relation to this property was repaid by deductions from the claimant's salary only in the sum of EC\$ 1289.61 monthly from 1993 to 2005. These payments were deducted from the claimant's savings account number '2827423'.
- [31] The loan in the sum of EC\$50,000.00 was repaid from the proceeds of sale of a property which the claimant owned solely at Humming Bird Housing Development. I do not accept the defendant's bare assertion that, although her name does not appear on the Certificate of Title, she was entitled to an interest in this property.
- [32] The court, however, accepts that the defendant operated a hairdressing salon from the Ponds property which generated income of approximately at least \$1000.00 per month that was used to make financial contributions to the upkeep of the house.
- [33] The court finds that the parties also started and operated an ice cream parlour and variety shop. The finding of joint ownership of the business is supported by the defendant's admission that the bank account for the said business was in the name of both the claimant and the defendant and her further admission that the claimant's car was used as transportation for the ice cream sales. She admitted that the vehicle was registered in the claimant's name and that he was paying EC\$500.00 per month for it, although she was responsible for maintaining it.
- [34] The shop closed in or about 2000 after which the defendant operated an itinerant confectionary and ice cream business. She would also sell faux floral arrangements, wreaths and masks.
- [35] While I am satisfied that the defendant bore the greater burden and responsibility in operating these business ventures on a daily basis with some assistance from the claimant, the claimant contributed substantial financial resources and time in ensuring the viability of the business.

- [36] During cross-examination the defendant admitted that the claimant assisted in making wreaths, masks and tamarind balls that were sold in the business. She further admitted that he was paying EC\$700.00 per month to the Foundation for National Development for a loan which he had taken for the benefit of the business.
- [37] While earnings naturally fluctuated, on a fair assessment of the evidence of both parties it seems fair to say that the joint family business yielded on average about EC\$3,000.00 per month.
- [38] Additionally, the claimant made indirect contributions in the nature of improvements to the house which enhanced its value.
- [39] In 2004, the claimant alone took a loan in the sum of EC\$ 70,000.00 from the St. Kitts Cooperative Credit Union which was primarily used to finance an upgrade to the kitchen at a cost of EC\$ 38,000.00 which significantly increased the value of the Ponds property.
- [40] Such contributions are material as recognized by Lord Hope in **Stack v Dowden**:
- “I think that indirect contributions, such as making improvements which added significant value to the property, or a complete pooling of resources in both time and money so that it did not matter who paid for what during the relationship, ought to be taken into account as well as financial contributions made directly towards the purchase of the property.”*
- [41] However, it must be noted that in order to count, any work must be substantial: decoration or insignificant repairs are of no moment.
- [42] The court is also sure that the defendant contributed to improvements to the property. For example, the claimant admits in his affidavit in reply that in 2006 he and the defendant contributed to the purchase of fifty fashion blocks which were added to the western wall fence to the property which enhanced the aesthetics. It seems to me that the addition of fifty fashion blocks falls into the latter category described in the paragraph above.

The Round Cottage Property

- [43] This property was acquired in 2005 with the intention of using it as a high end rental property. By 2009, however, the parties agreed to sell the Ponds property and use the proceeds to reduce the mortgage on the Round Cottage property.
- [44] The evidence before the court establishes that the purchase price for this property was obtained via a loan taken from the Bank of Nova Scotia in the names of the claimant and defendant. Of this sum, \$10,310.35 was used to pay off the outstanding balance remaining on the mortgage in relation to the Ponds property.
- [45] The mortgage payments were initially paid by both the claimant and defendant. The defendant contributed half of the mortgage payments between March 2005 and December 2010. This is admitted by the claimant in his amended statement of claim.
- [46] The defendant and the three children of the family moved into this property in 2007 while the claimant was temporarily resident in Barbados attending a police training course.
- [47] Shortly thereafter the Ponds property was rented out at the rate of approximately EC\$1200.00 per month.
- [48] When the tenants vacated this property in or about January 2011, the defendant and two adult children of the parties resumed residence there and continue in occupation up to the present time.
- [49] The defendant has given no account of the rent collected from the Ponds property, save to say generally that it was applied to completion works and bills for the Round Cottage property.
- [50] There is some dispute between the parties as to the rental income derived from the Ponds property. The court prefers the evidence of the claimant on this point and finds that the rental income derived from this property was approximately \$1,200.00 per month.

- [51] The court accepts the evidence of the defendant that some of the rental income was used to maintain the property during the absence of the claimant and partly to fund some completion works on the Round Cottage property.
- [52] When the claimant returned to the Federation in 2008 he resided at the Round Cottage property with the defendant and their three children until he left the property on 1st February 2011 to reside elsewhere.
- [53] Since 2010, the claimant alone has had to bear the burden of paying the mortgage on this property which has since been sold by the bank. Mortgage payments are deducted from his pension.
- [54] The claimant alone has paid the house and land taxes on both properties as evidenced by exhibit “**RL15**”. I accept his evidence that he alone paid property insurance.

How the parties arranged their finances

- [55] There is little evidence relating to the arrangement of the parties’ finances. It appears that, apart from the business account which was in joint names, the parties maintained separate accounts and did not pool their resources.
- [56] Such evidence as there is does not permit the court to ascribe any meaningful value to this as a factor that alters the beneficial interest in either property.

Conclusions

- [57] Having examined the whole course of conduct in relation to the subject properties I find that though the legal titles to both properties were held jointly in the names of the claimant and the defendant, there are factors which indicate the parties did have a different common intention in so far as the beneficial interest of the properties was concerned. This is therefore not a case where the only evidence is that the properties have been acquired in the parties’ joint names.

- [58] In the first place, the whole of the purchase price for the Ponds property was contributed by the claimant who assumed liability for the mortgage and who sourced the balance of the purchase price from a loan from his brother and a friend. The mortgage was repaid solely by deductions from his salary from an account standing solely in his name.
- [59] It cannot be that the claimant intended to gift any part of his own contribution to the defendant.
- [60] While the fact that a property is taken in joint names affords some evidence that both parties were intended to have some beneficial interest, the court finds that in the circumstances of this case, a joint tenancy in equity is rebutted on the evidence, given that the legal owners have provided the purchase money in unequal shares. This conclusion derives from the application of the resulting trust presumption.
- [61] While the defendant contributed to outgoings and household expenses relating to the upkeep of the property, and over time would have obtained a beneficial interest (as conceded by the claimant), on any view her contribution was surpassed by that made by the claimant.
- [62] Accordingly, the court does not consider that what subsequently transpired between the parties justifies an equalization of the beneficial interest.
- [63] In so far as the Round Cottage property is concerned, at the time of acquisition the parties assumed joint liability for the mortgage by which the property was secured. Legal title to this property was in both names. Thus, a presumption arises that at the time of acquisition the parties intended that the legal and beneficial interests would be 50% each.
- [64] Accordingly, a heavy burden rests on the claimant to demonstrate that the parties intended the beneficial interest to be different from the legal interest.
- [65] 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.

[66] 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)

[67] 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.

[68] In this case, the undisputed evidence is that, to date, the claimant has contributed significantly more to the repayment of the mortgage from 2005 up to the hearing of this matter. The defendant made equal contributions from March 2005 to December, 2010 before ceasing to make any further contributions of any kind to the outgoings, expenses or upkeep of the Round Cottage property.

[69] The evidence is that the monthly mortgage payments totaled about EC \$3,620.00. The claimant contributed EC \$1,860 per month while the defendant contributed EC \$1,760 from March 2005 to December, 2010.

[70] In the court’s view, this merits an upward adjustment of the beneficial interest in the claimant’s favour.

[71] The court has also given consideration to the fact that substantial repairs were made to this property.

[72] It is settled that the fact that one party carries out significant improvements to the home will justify an adjustment of the apportionment of the beneficial interest in his favour. The rationale is explained in **Stack v Dowden**:

“In such a case, the cost could be seen as capital expenditure which differs from regular outgoings relating to the use of the home, and is not dissimilar in financial effect, from the cost of acquiring the home in the first place. To qualify, any work must be substantial: decoration or repairs (at

least unless they were very significant) would not do.” (per Lord Neuberger at para.139.)

- [73] In this regard, the evidence is that the significant works done on the Round Cottage property included the addition of a stairway leading to an upstairs gazebo which was undertaken by the defendant during the claimant's absence from the jurisdiction. However, this upgrade was funded by funds derived from the rental of the Ponds property and not from the defendant's personal funds. Accordingly, no one party can claim responsibility for these improvements.
- [74] I, however, accept the claimant's evidence under cross-examination that he solely funded material for the replacement of the roof, met the cost of tiling the master bedroom and kitchen and painting the house. These are significant improvements to the property.
- [75] In view of the whole course of dealing between the parties, I am persuaded that the circumstances give rise to a clear inference that the parties intended their beneficial interest to be different from their legal interest. I hold that the beneficial interest in the property was held in shares of 70% for the claimant and 30% for the defendant.
- [76] That said, in practical terms, the reality now is that the Round Cottage property has since been sold by the Bank of Nova Scotia. There remains an outstanding debt owing to the bank in the sum of EC \$305,603.72. The evidence is that the claimant alone currently services this debt from his pension with monthly payments of EC \$902.00.
- [77] In the premises, I make the following orders and declarations:
1. The claimant ROBERT ALEXANDER LIBURD, and the defendant, LYNDA-LOU LOUISE LIBURD, are the joint legal and beneficial owners of the property comprised of house and land situate at Lot 37 Ponds Extension, Basseterre in the Parish of St. George in the island of Saint Christopher and registered in Register Book S2 Folio 313 in the Register

of Titles for the Island of St. Christopher in shares 80% for the claimant and 20% for the defendant.

2. The claimant is entitled to possession of the said property.
3. The defendant is to vacate the said property within 60 days of this judgment.
4. The said property is to be sold and the net proceeds of sale be shared between the claimant and defendant in shares 80% for the claimant and 20% for the defendant, after deducting the sum that the defendant would have paid as mortgage contributions in respect of the Round Cottage property had she not defaulted from 31 January 2011 to the date of this judgment.
5. The claimant is awarded costs to be assessed if not agreed.

Trevor M. Ward, QC
Resident Judge

By the Court

Registrar