

ANTIGUA AND BARBUDA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

.CLAIM NO ANUHCV2013/0369

BETWEEN:

VERE CLEOFOSTER FORD

Claimant/Counter Defendant

AND

CAVEL SONIA FORD

Defendant/Counter Claimant

Appearances

Mr. John Fuller for the Claimant/Counter-Defendant

Ms. C. Debra Burnette for the Defendant/Counter-Claimant

2016: February 3; November 16

JUDGMENT

Introductory

[1] LANNS, J[Ag]: Vere Cleofoster Ford (Mr. Ford or 'the Claimant') and Cavel Sonia Ford ("Ms. Ford" or "the Defendant") were married in September 1994 and divorced in April 2012. By operation of law, the divorce took effect from 29th May 2012, and the marriage thereby brought to an end.

[2] Notwithstanding the divorce, the parties continued to reside in the matrimonial home until June 2013, when Ms Forde moved out of the matrimonial home and eventually migrated to the United States of America taking the youngest child with her.¹ According to the Claimant, the Defendant has not since returned to Antigua. Indeed, it was from the United States that the Defendant, by order of the court, gave evidence in these proceedings by way of video link. i.e. Skype. At the date of the hearing, she was unemployed. The Claimant remained in Antigua, employed at Mill

¹ The eldest child was already in the United States

Road Club as an Assistant Manager. However, during the trial, he told the court that he is a Hotelier, but he was unemployed at the time.

- [3] There are two children of the marriage, one of whom is a minor and the other is now an adult.
- [4] In this case, the live issue concerns a dispute in respect of the interest of the parties in the former matrimonial home described as parcel 26 of Block # 610 17911, Registration Section: Ottos, New Town (the disputed property or 'the former matrimonial home'), acquired and registered in joint names of the parties. Mr Ford and Ms Ford are expressly declared to be joint tenants, so the right of survivorship applies unless either or both parties during their lifetime sever the joint proprietorship. Indeed, severing of the joint proprietorship is one of the reliefs sought by the parties in these proceedings. The question is, upon severance of the joint tenancy what is the interest of the parties in the disputed property? Once a joint tenancy is severed, a tenancy in common is created. Indeed, there is authority for the view that upon severance of a joint tenancy, each party would be entitled to a half share in the property.² In this case, however, the parties are in conflict as to what share each party is entitled to upon severance of the joint tenancy.
- [5] The Claimant is seeking the following reliefs:
1. A declaration that parcel 26 is held by the Claimant and the Defendant in trust for the Claimant and the Defendant in the following shares: nine-tenth for the Claimant and one-tenth for the Defendant
 2. An order that the registered joint proprietorship held by the Claimant and the Defendant over the disputed property be severed
 3. A declaration that the Claimant be entitled to a nine-tenth share in the disputed property, and the Defendant a one-tenth share.
 4. An order directing the Registrar of Lands to amend the Register so as to show the Claimant and the Respondent as proprietors in common, with the Claimant holding a nine-tenth share and the Defendant holding a one-tenth share in the disputed property.
 5. Costs
- [6] The Defendant disputes the claim on several grounds and has counterclaimed for the following reliefs:
1. An order that the joint proprietorship be severed.

² Stuart v Kirton (1994) 30 Barb. L.R. 405, 409, per Waterman J.; Cited by Sampson Owuso, in Commonwealth Caribbean Land Law, Sampson Owuso, USA and Canada: Rutledge-Cavendish, 2007, page 341.

2. A declaration that the parties hold the disputed property as tenants in common in equal shares, pursuant to the provisions of the Married Women's Property Act Cap 267, and for the purposes of sale of the said property.
3. An order that the property be sold and the proceeds divided equally between the parties after payment of all the expenses of sale.
4. An order that the Claimant do pay to the Defendant the costs of this action in accordance with the Civil Procedure Rules, 2000.

[7] The Claimant, by way of reply denied all the allegations contained in the Defence save and except paragraphs 4 and 5 which address an error in transmission of the correct parcel, and rectification of the register to reflect the correct parcels. The Claimant gave his own version of the matters pleaded in the Defence. As regards the counterclaim, the Claimant relied on paragraphs 1 -13 of his statement of claim. But he went on to ask the court to order severance and sale of the disputed property with the right of the Claimant to buy in, and that the proceeds be divided as to nine-tenths to the Claimant and one-tenth to the defendant.

The Claimant's case

[8] The Claimant's pleaded case is that the parcel of land upon which the former matrimonial home stands, was purchased in 2000 by the Claimant from his Aunt for the sum of \$55,000. Of that sum, the Defendant contributed \$8,000.00 and the Claimant \$42,000.00. The land was originally registered in the sole name of the Claimant.

[9] In the year 2000, the Claimant approached the ACB Mortgage and Trust Company (ACB MTG) for a loan for the purpose of constructing a three-bedroom family home. During the negotiations, the ACB MTC indicated that it required the name of the Defendant to be placed on the title as a condition for the loan. Consequently, the Claimant transferred the land from himself to himself and the Defendant.

[10] The parties obtained a joint mortgage loan of \$298,000 from the ACB MTC. The Defendant contributed \$15,000 as security for the loan from her thrift fund contributions. The loan was also secured by parcel 26, and a life insurance policy taken out in the name of the Defendant. The monthly repayments of \$2,875.00 are being made by the Claimant. Also, the annual insurance premiums and property tax. The Claimant meets all expenses for the maintenance and upkeep of the disputed property. The Claimant paid all utility bills in respect of the disputed property until 2010 when the Defendant assumed responsibility for water bills, and for her telephone. The Claimant pays for his own internet and the Defendant pays for hers. The Defendant pays for Cable TV which the Claimant does not use. The Claimant pays for the insurance policy in the Defendant's name which was a condition of the granting of the mortgage loan.

[11] The Claimant pays the Defendant \$650.00 per month as his contribution to sundry expenses for the children of the family. He purchases his own food and cooks for himself. The Defendant

purchases her own food and she purchases food for the children from his contribution to the expenses for the children.

The Defendant's Case

- [12] The Defendant denies that the land was purchased at a price of \$55,000. She says that the land was purchased for EC\$1350.00 or US\$5000.00 from the Claimant's Aunt, Evelyn Gervais who lives in New York. The Defendant states that she contributed \$7000.00 as purchase money for the land and not \$8,000.00 as stated by the Claimant³. The land was purchased for the benefit of both parties and the intention was that they were to be joint owners. The Claimant and the Defendant approached the ACB MTC to obtain financing to build a matrimonial home. They obtained a loan of \$298,000. The parties discussed and agreed that the Claimant would pay the mortgage, most of the utilities and the life insurance policy, and the Defendant would purchase groceries, maintain the children, pay half the school fees and local telephone bill. The Defendant admits that the life insurance was taken out in her name, but says this happened with her consent because the Claimant refused to do the required medical which was a prerequisite for the granting of the loan. It was agreed between the parties that the Claimant would pay the premiums since he was the higher income earner. At one point in 2007, the Claimant did not pay all the utilities as agreed. He refused to pay the cable bill and it was disconnected in 2009. In 2010, the Claimant stopped paying the water bill. In relation to the Claimant's payment of \$650.00 per month, the Defendant asserts that this was by virtue of a consent order embodying the terms of a maintenance agreement in respect of the youngest child of the marriage.
- [13] The Defendant asserts that the disputed property is jointly owned by the parties, and she does not accept that the Claimant and the Defendant hold the property in trust for the Claimant and the Defendant as alleged.

The issues

- [14] Learned counsel for the Defendant identified the issues to be:
1. Was it intended that the Defendant should have only a one tenth share in the property?
 2. Can the joint proprietorship now be severed and a declaration made that the parties are now tenants in common?
 3. If the joint proprietorship is severed and the property is held by the parties as tenants in common, was it intended that the parties should have equal shares?
 4. Should the property be sold and the proceeds be divided equally among the parties after payment of the encumbrances?

³ No receipts were received by either party

[15] The Defendant has not identified any issues for the court's determination, but ultimately it is for the court to determine what the issues are. In this regard, the issues seem to be: .

- a) What shares were intended upon acquisition of the disputed property?
- b) Whether the joint tenancy in the disputed property could/should be severed? If so;
- c) To what interest or shares in the disputed property are the parties entitled upon severance?
- c) Should the disputed property be sold: if so, how should the proceeds of sale be applied?

[16] For the reasons given below, I am satisfied, after reviewing the pleadings and the relevant legislation; and after having seen and heard the parties; and after considering the evidence given in the witness statements, cross-examination, and the documentary evidence; and benefitting from the input of counsel in their written submissions, that the just and equitable way of disposing of this matter is to sever the joint proprietorship of the disputed property, thereby creating a tenancy in common in equal shares of 50:50 as contemplated by section 101 (3) of the Registered Land Act Cap 374. Alternatively, I am not of the view that I should depart from the maxim 'equality is equity' based on the substantial nature of the contribution of the Claimant, as learned counsel for the Claimant has urged the court to do. Further, I am satisfied that the disputed property should be sold, and the net proceeds be divided equally between the parties after the mortgage balance has been cleared, and all expenses associated with the sale of the disputed property have been defrayed. For the purposes of sale the disputed property will be treated as one asset. Finally, the court is of the view that it should also make consequential orders and declarations.

The evidence

[17] The evidence for the Claimant is contained in his witness statement, and cross-examination and re-examination thereon. The evidence for the Defendant is contained in her witness statement, and in cross-examination and reexamination thereon. There is also a bundle of documentary evidence before the court. In their witness statements, both parties stuck, for the most part, to their case as pleaded and although neither party was shaken in cross-examination, both parties made admissions and denials and there were certain variations in their case, and explanations given which helped the court to determine the outcome of this case. In the end, it was quite clear to me that in the present case, there was no plausible reason to depart from the principle of equality is equity. in relation to the beneficial interest of the disputed property held in joint names of the parties.

[18] During cross-examination, counsel for the Claimant laid much store on the issue of contributions made by the parties toward the acquisition of the disputed property, household expenses and utilities and maintenance of the children. As regards the acquisition of the disputed property, the Claimant insisted that he paid \$42,000 towards the land itself, while the Defendant paid \$8000,00;

that he paid \$4000,00 towards the rectification of the title while the Defendant paid \$2000.00; that he has been paying and continues to pay monthly installments of \$2875.00⁴; towards the mortgage; that he pays annual property insurance premiums and taxes; that he paid \$16,231.00 for major renovations to the disputed property; that he pays \$650.0.0 monthly towards child maintenance; and he pays utility bills and groceries.

[19] During cross examination, the Defendant was adamant that the land costs EC\$1350.00 or US\$5000.00. She said that is what the Claimant told her. I believe her. She said she was surprised to learn that the Claimant stated that the land costs EC\$50,000.00 after telling her that his Aunt was asking for US\$5000.00.⁵

[20] Significantly, counsel for the Defendant, during cross-examination, focused on the issue of whether the parties had any discussions or agreement in relation to who would pay the mortgage, and the insurance premiums, among other things. In this regard, the Claimant said he had certain discussions with the Defendant, but he never had any agreement with her as to what she would pay, but he expected that she would pay some of the expenses and back him up if he ran into any difficulties with the loan and the two insurance policies. He said there was no need for discussion or agreement as to who would pay the mortgage because he knew what his salary was, and he knew that he could have paid the mortgage on his own. At the time of making the application for the loan, he found out from the information contained in the application that his wife was only earning a fraction of what he was earning.

[21] The Defendant, in cross examination, agreed that the Claimant bore the greater burden of the household expenses and the mortgage and the insurance. Asked whether she would agree that from the day the loan was granted, the Claimant had paid every installment, the Defendant replied "that is the arrangement we made". As regards the insurance policy, the Defendant stated she offered to pay the insurance policy, but the Claimant told her he would pay it. She accepted that she was not now in a position to assist in repaying the mortgage for she had not worked since June 2013 when she left Antigua mainly for health reasons.

Submissions for the Claimant

[22] The post hearing submissions advanced by learned counsel Mr John Fuller (Mr Fuller) on behalf of the Claimant, so far as relevant, can be summarised thus:

- a) The principles by which the court should be guided are laid down in the case of **Abbott v Abbott** Privy Council Appeal No 142 of 2005, as adopted by the Court of Appeal in **Michael v Michael** HCAP2008/015, that "the parties whole course of conduct in relation to the property must be taken into account in determining their shared intention as to its ownership". In applying the holistic approach, the court

⁴Reduced from \$3200 between 2012 to 2014.

⁵The Claimant had not seen the Witness Statement of the Claimant

should have no difficulty in concluding that the greater entitlement to the beneficial interest in the disputed property rests with the Claimant, and that the entitlement and beneficial interest of the Defendant is indirect and insubstantial.

- b) The evidence discloses that the Claimant bore all the burden of acquisition of parcel 26, the costs of the mortgage, the maintenance of the residence upon parcel 26, the costs of the insurance of the Defendant, utilities and all other expenses relating to the sustenance of the family. Any expenses that were borne by the Defendant were for her own personal use.
- c) The Claimant spent considerable sums renovating the property.
- d) In 2013, the Claimant migrated to the United States, and since then has contributed nothing to family expenses.
- e) There remains another ten years until the mortgage is paid off, and this expense together with other expenses relating to the disputed property rests solely on the Claimant.

The Defendant has no income and is unemployed. When she worked, her income was kept by her separately and used for her own personal use.
- g) The disputed property was transferred in both parties' names not because of any agreement, but because the bank demanded it.
- h) The circumstances of this case require a departure from the principle of 'equality is equity' as was held by Blenman J in the case of **Norman Jarvis v Carmella Williams** ANUHCV2008/0238. Accordingly, based on the totality of the evidence, the Claimant is entitled to 90% of the beneficial interest and the Defendant to 10%.
- i) The court should order that the property be valued and the Claimant be at liberty to pay the Defendant 10% of the value arrived at.

Submissions for the Defendant

- [23] Learned counsel for the Defendant. Ms E. Debra Burnette (Ms Burnette) has prefaced her submissions by setting out the law on joint proprietorship/co-ownership as contained in Section 100 of the Registered Land Act, Cap 374 (RLA). After quoting the provisions of that section, counsel went on to quote the provisions of Sections 4 and 8 of the Partition Act Cap 305⁶ which counsel said provide an avenue through which a severance can be effected, and which also provides for sale of properties (such as the disputed property) and for necessary or proper consequential directions.

⁶ I doubt whether the Partition Act was intended to apply as between spouses or former spouses. It predates the Married Women Property Act (MWPA) which has not been repealed.

- [24] Counsel then submitted that it is not open to the court to enquire meticulously in cases of joint proprietorship, and dissect the contributions made by the parties. Instead, the court must apply the equitable maxim of 'equality is equity'. Counsel cited the case of **Rimmer v Rimmer**⁷ wherein it was held that the beneficial interest of a husband and wife in jointly owned property was not ascertainable by reference to amounts of contribution. It was counsel's further submission that it would be a miscarriage of justice if the court, in determining the manner in which to divide jointly owned property, were to merely consider the amounts of the contribution made by the parties. Counsel further submitted that in the absence of any agreement, the court cannot apportion the interest of the parties in accordance with the contributions made by them. Counsel stressed that this was not a case of constructive or resulting trust where either the Claimant or Defendant has to prove a beneficial interest in property owned by only one party. Counsel was of the view that the court must consider whether, having regard to the fact that the parties' marriage has been dissolved, it is prudent to sever the co-ownership. In the view of counsel, the answer must be 'yes'.

Discussion

- [25] This matter engages not only the law of equity, but also the law of contract and land law/law of real property. As regards the law of real property, where freehold or leasehold property is acquired in the name of two or more persons, the effect of section 100 of the Registered Land Act is that such persons are deemed and taken to be proprietors in common, unless expressly declared to be joint proprietors of the legal estate. There is in evidence, the certificate of title for the disputed property. Indeed, the certificate of title for the disputed property expresses that Vere Cleofoster Ford and Cavel Sonia Ford hold the property as joint tenants. As joint tenants/proprietors, they enjoy equal rights in respect of an undivided title, and survivorship applies. However, as joint tenants/proprietors, either proprietor is free, and has the right to sever in accordance with the procedure/method laid down in the RLA, s. 101 (3). The parties herein have chosen not to utilise the method/procedure set forth in s. 101 (3) of the RLA; rather, (perhaps for failure to agree), they have chosen to come to court to effect severance of the joint tenancy/proprietorship, even though there is no pleading or evidence that either party withheld consent to sever, or refuses to execute the instrument of severance in accordance with 101 (3).
- [26] That being said, it is clear from the pleadings, that both parties are united in their desire to have the court sever the joint tenancy. It is also clear that both parties are united in their desire to have the court determine their respective interest/share in the disputed property upon severance. Further, it is clear that the parties are united in their desire to have the court order that the disputed property be sold and the proceeds distributed between them in the desired/suggested shares.⁸ Where the parties part company is the extent of their interest or shares in the disputed property, once severed. This is seriously in dispute. Essentially, the Claimant would wish the court to sever the

⁷ [1952] 3 All ER 746

⁸ See para 2 of the counterclaim; and para 3 of the Defence to Counterclaim

joint tenancy and create a tenancy in common in shares of 90% in his favour and 10% in the Defendant's favour; and then go on to order that the property be sold at the market value and the Claimant be permitted to buy out the purported 10 % share of the Defendant; Whereas, the Defendant wants the court to sever the joint tenancy and declare that the parties are tenants in common in equal shares; and that the property be ordered to be sold, and the mortgage debt paid up, and the Defendant be paid half of the net proceeds of sale.

- [27] Inasmuch as there is no opposition or challenge to the claim for severance, the court has no hesitation in acceding to the claim by both parties for severance of the joint tenancy. Indeed, the court is satisfied that there should be severance, given that the parties are not now married, and have gone their separate ways. Accordingly, the court will order that the joint proprietorship be severed. And I so order.
- [28] The effect of severance of the joint proprietorship is that there is created a tenancy in common so that the right of survivorship will no longer apply, and the unity of title is destroyed. The parties now hold a distinct share. But not unequal shares. To my mind, it is not open to the court to say that the joint proprietorship be severed in anything other than equal proportion, they having held the property as joint tenants. Now that the joint tenancy is severed, the effect is that there is created a tenancy in common in equal shares. In my judgment, this is what is contemplated or implied by section 101 (3) of the RLA. The court is not of the view that it should look behind the clear words of the title (joint tenancy) to determine the respective shares of the parties, upon severance. Further, the court is of the view that inasmuch as both parties are desirous of severing the joint tenancy, they are impliedly agreeing to severance in the proportions stipulated by s. 101 (3) of the RLA. If I am right, then I must declare, and do hereby declare that the parties now hold the disputed property as tenants in common in equal shares, and I order that the parties do execute the necessary instruments/documents and take all other necessary and proper steps to give effect to severance of the joint tenancy as determined by the court.
- [29] That should conclude the matter, save for the issue as to the sale of the disputed property and application of the proceeds of such sale. However, in the event that I am found to be wrong in my interpretation of section 101(3) of the RLA, and/or in my determination that the parties now hold the property as tenants in common in equal shares, I go on to apply the principles in the proviso in s. 161⁹ of the RLA, and examine the evidence to see if a contrary intention appears to justify a departure from the presumption of equality, and to see if the Claimant has proved to this court that he is entitled to more than an equal share of the beneficial interest in the disputed property upon severance.

⁹ Any matter not provided for in this Act or in any other written law in relation to land ... registered under this Act and interest therein shall be decided in accordance with the principles of justice equity and good conscience. It has been said that there is a serious lacuna or gap in the law as the RLA does not provide for a situation where a fellow joint tenant fails to agree to file the prescribed instruments under 101 (3), and in that regard, s. 161 is applicable. (per Olivetti J in *Edwards v Edwards*, Suit No 230 of 2003); See also *Eunice Edwards v Keith Edwards*, Ahtigua and Barbuda Civil Appeal No. 15 of 2005.

[30] As we have seen, I adverted briefly in paragraph [29] to the 'presumption of equality'. It will be convenient to develop that point by reference to case authority.

[31] In the case of **Stack v Dowden**,¹⁰ Lord Hope of Craighead considered the rule of presumption of equality in relation to property vested in joint names. His Lordship stated at paragraph 8:

"Where title to a dwelling house is taken in joint names, there is a presumption of equality of shares. The presumption that the common owners are entitled to share in the value of the property equally, is however capable of being displaced by evidence to the contrary."

[32] The case also dictates that the onus is on the joint owner who claims to have other than an equal share. It means therefore that the presumption alluded to earlier is not conclusive but is rebuttable by evidence introduced to overcome it. The court will therefore review the evidence.

[33] As we have seen, the Claimant's claim to a 90% share in the disputed property is predicated primarily on the financial contribution he has made and continues to make towards the outstanding mortgage loan. In effect, he says he has contributed the lion's share while the Defendant's contribution was insubstantial. Is contribution a relevant consideration in the present case?

[34] In **Stack v Dowden**, Baroness Hale stated at paragraph 69:

"69 **When a couple are joint owners of the home and jointly liable for the mortgage, the arithmetical calculation of how much was paid by each is 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 taken to have intended that their beneficial interests should be different from their legal interests will be **very unusual.**" (Emphasis mine)

[35] Is this an unusual case? Did the parties intend their interests should be other than equal? Has the Claimant rebutted the presumption of equality? Has he shown why the legal interest should be displaced; or why the court should determine that his claim to entitlement to more than a half interest should be upheld? Has the Claimant discharged the onus placed on him?

[36] It is undisputed evidence that the parties were married in 1994 and divorced in 2012. The union produced two children - Marquis who is now 20 and Alexandria who is now 13. Initially, during the course of their marriage, the parties were living together in rented premises. Mr Forde was in a managerial position at the Mill Reef Club, earning a monthly salary of \$8,100.00; whereas Mrs. Forde was an account's clerk at a Curtain Bluff Hotel earning a salary of \$2,754.00 per month.¹¹ The parties acquired a parcel of land from Mr Ford's Aunt. The evidence of the parties differ as to what sum of money was paid for the land. The court obtained no documentary evidence

¹⁰ [2007] 2 All ER 948.

¹¹ In his witness statement, he describes himself as a Hotelier.

from either of the parties. Nevertheless, I believe the testimony of the Defendant that the Claimant told her that the land was offered to him for US\$5000.00; and hence the reason why she gave him in his hand the sum of EC\$7000.00 plus another \$2000.00 to assist in clearing the outstanding balance that he claimed was owing to the Aunt for the land. That being said, it is not inconceivable that the land was worth \$50,000¹², but the Claimant's Aunt sold him the land at a discount, but that was not Claimant's case. And he has not called his Aunt to give evidence on this serious aspect of the case. In any event, for the purposes of the eventual sale, the land and the house would be treated as one asset which is the former matrimonial home.

[37] The dwelling house which was eventually constructed on the land was financed at a cost of \$298,000 by means of a mortgage loan in the joint names of the parties. Additionally, the Defendant collateralised the loan with \$15,000.00 from her thrift fund. The land was used as security for the loan, together with an insurance policy in the name of the Defendant¹³. The Claimant has been exclusively paying the mortgage, the annual insurance premiums and all the outgoings on the property; he shared the household expenses and utility bills; he shared maintenance and school fees for the children. The Defendant has been paying some of the household expenses, groceries, gas, phone and internet; she shares school fees, and had been wife, mother and homemaker and the primary care-giver of the children. She had the responsibility of repaying a personal car loan which the Claimant guaranteed and which she used for her personal use and to take the children back and forth. The car was subsequently sold for \$US4000.00 and the Claimant asked the Defendant for \$1000.00 which he received.

[38] The Defendant says the parties discussed everything about the acquisition of the land, the construction of the house, the application for the mortgage loan, and who will pay for what. I believe her. Apparently, what they had not discussed, was whether the title for the land would be put in sole name of the Claimant. She said she had an expectation that the Claimant (who was handling most of the formalities) would do the right thing by adding her name to the title to the land since she had contributed to its purchase/acquisition. He did no such thing, and has laid much store on the fact that the land was originally vested in his sole name, and that, but for the request of the Loans Officer of the ABCMTC, it would not have changed. Indeed, the Defendant said that until the application for the loan, she was unaware of the fact that the Claimant had placed the title for the land in his sole name and had cunningly excluded her and did not discuss or disclose it. It would seem, on these facts that the exclusion of the Defendant from the title, evinced an intention on the part of the Claimant that the Defendant was not to have any legal or beneficial interest in the disputed property. But to my mind, this in and of itself does not evince an intention on the part of the Claimant, that the Defendant had no interest in the land at the time it was acquired.

¹² The valuation Report on the disputed property, prepared by Mr John Bradshaw, Civil Engineer, dated 25th June 2012 ascribes a value of \$81,675.00 for the land itself, and \$417, 000,00 for the building which stands on the land. There is a possibility that the land itself would have appreciated in value from 2000 when it was purchased, to present.

¹³ The children of the marriage are the beneficiaries of the Insurance Policy taken in the name of the Defendant.

- [39] It is the law that where a property is acquired in the name of one party, if the other party has contributed to the purchase, his or her absence from the title is not evidence that he /she was not intended to have an interest.¹⁴ In the present case, it turned out that circumstances altered the situation for (even though the Claimant gave a different reason for the addition of the Defendant's name on the certificate of title) the Defendant was not prepared or willing to join in a mortgage without her name being placed on the title to the land that she had helped to acquire from the beginning.
- [40] I am unimpressed by the Claimant's evidence in cross-examination that although he had discussions with the Claimant, he had no agreement with her in relation to the payment of the mortgage and the life insurance premiums.
- [41] I find the parties would have undoubtedly had discussions which led to an agreement that the Claimant would make the payments that he had been making and continue to make including the mortgage and insurance. It was reasonable and just for him to have assumed such responsibility for the mortgage and the insurance payments, because he knew his Wife was earning much less than him. He did not assume that responsibility because of any intention with regard to the legal or beneficial ownership of the matrimonial home. He himself said in cross-examination that "the intention was that both of us would own our family home". There is no evidence to show any agreed intention by the parties that the property would be owned by them in any particular shares other than in equal shares. There are no words in the title to suggest any distinct share. It bears repeating that the title expressed that the disputed property is owned by both parties as joint tenants. If the Claimant intended the beneficial interest in the property to be other than equal shares, he could have expressed it to be held as tenants in common when he came to transfer the property from himself to himself and his wife. He did no such thing. And even though he explained it away by saying in effect that it was the Bank's preference in order to get the loan, he thereafter intended his wife to be a true joint tenant with him. The property being placed in joint tenancy, that is prima facie proof that each spouse is intended to have on severance of the joint tenancy or tenancy, a one half beneficial interest in the disputed property.
- [42] It seems unreasonable for the Claimant to come now (after placing the property in joint tenancy, and admitting that the intention was for both of them to own their family home) to ask the court to divide the property in accordance with contributions when he knew very well that the Defendant's contribution would be limited to her earning capacity. Moreover, even though he knew (at least at the time of the application for the loan) that the Defendant's contribution would not be equal, he, by his own admission, in cross-examination, made no agreement with her that her share in the property would be limited to what she could contribute. In the absence of any agreement I find that the parties must have assumed an equal split, and the court is not inclined to exercise its discretion so as to apportion the interest of the parties in accordance with the contributions made by them. I am similarly unconvinced that the property (now taken to be held in tenancy in common in equal

¹⁴ See *Stack v Dowden*, Judgment of Lord Neuberger at page 6, para 115.

shares) should be divided in the shares suggested by the Claimant. Mr Fuller relied on the Antigua case of **Norman Jarvis v Carmella Williams**, ANUHCV2008/0238 where Justice Blenman apportioned the disputed property in shares of 80% and 20% in favour of the Husband. But it is my view that although that decision may be correct on its peculiar facts, the case does not help the Claimant as it revolved around resulting/constructive trust. This is not a case of resulting or constructive trust where one party has to prove a beneficial interest in property placed in the name of one party. This is a case where legal title is placed in the joint names of the parties; where they wish the tenancy to be severed, and where the authorities say that upon severance, the unity of title is destroyed and the parties hold as tenants in common in equal shares. This is a case where the parties seemed to have begun their marriage owning nothing but their salaries. I find that although they lived in rented premises for a while, they had a common goal to acquire a family home for themselves and their children yet unborn. This common goal eventually became a reality based on discussions between the parties leading to specific and or implied agreements as to joint proprietors. The parties arranged their finances in a particular way in terms of the repayment of the mortgage and insurance and contributions toward household and other expenses. There was no contemplation at the time as to what would happen if the marriage broke down, the joint tenancy severed and the property then being sold.

[43] The marriage broke down after 17 years of marriage. In this connection, I bear in mind what was said in **Dunford v Dunford**⁵

"... [A]s soon as a marriage is broken down the parties interests should be crystallised. They must not be left in a state of perpetual uncertainty. They must know exactly where they stand. The financial and property issues should be settled once and for all so as to allow the parties to make a clean break with the past and begin a new life."

[44] In settling this property dispute, I would be content to adopt the pronouncement of Baroness Hale in **Stack v Gordon** that when a couple are joint owners of the home and jointly liable for the mortgage, the arithmetical calculation of how much was paid by each is 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. This is the situation in this case. I find that the Defendant contributed as much as she reasonably could, sanctioned by the Claimant. She made direct and indirect contribution to the marriage and welfare of the family. Her role and contribution should not now be downplayed or minimised as being inferior or insubstantial to that of the Claimant, or be seen as a prime factor in determining the interest or share in the disputed property. I find that despite the disparity in salaries, the Defendant assisted in giving the marriage the footing it got in terms of the land upon which the matrimonial home stands. She looked after the children. She contributed to their maintenance as did the Claimant. She has admitted that the Defendant was the greater

^{1s} (1960) 1 All ER 122

contributor, but she stressed that this was the arrangement between them. I believe her. In regards to the mortgage, even though it is the Claimant who has exclusively been paying it, both parties are jointly and severally liable for any outstanding balance thereon. The outstanding balance is a debt owed by the parties jointly and severally. The evidence of the Claimant is that as at the 25th day of February 2015, the balance owing on the mortgage was \$207,085.97.¹⁶ At that date, the equity value would have been about \$107,000.00. The benefit of all the expenditure, whether it be in terms of the mortgage, taxes or maintenance of the property would ensue undoubtedly to the benefit of the parties, but such payments, having been made by the Claimant solely, will probably lead ultimately to the greater financial benefit of the Defendant than it would for the Claimant, for the court will, for reasons stated earlier and as will be stated below, order that the parties are each entitled to receive an equal share of the net proceeds of sale of the former matrimonial home. It will probably also lead to a greater financial benefit for the Defendant than the Claimant since it is likely that the former matrimonial home will have likely appreciated in value through the years. However, things will even out because an important circumstance to be taken into account is that both parties should have a home. And the children should have a home. As Singh J. observed, one primary concern is that on the breakdown of the marriage, the parties should, if possible have a roof over his or her head.¹⁸ The evidence is that the Claimant has a secure roof over his head - that of the former matrimonial home. The Defendant also has a roof over her head albeit a tenancy. The extra financial benefit, if any, will allow her to purchase a home for herself and the children, or to meet her rental obligation up to a certain point.

- [45] The Defendant has stated that she is not in a position to assist in clearing or reducing the mortgage debt as she is unemployed. As stated, she has had to find alternative accommodation for herself and her children in the United States, paying an undisclosed monthly rental.¹⁹ She was not ousted/forced from the matrimonial home by the Claimant, directly. As I have said, she continued to live in the matrimonial home even after the divorce. She seemed to have left voluntarily. Her explanation for migrating was that she became seriously hypertensive, and had been in and out of the Mount St John Hospital without getting any better. So she moved to the United States for better medical attention. The Claimant has not denied that the Defendant had been ill and in and out of the hospital in Antigua. I have seen a copy of a medical certificate indicating that the Defendant is under medical care for uncontrolled hypertension and travel was not recommended.
- [46] Significantly, the Defendant said she felt that for the benefit of her health, she needed to distance herself from the Claimant. Since the Defendant migrated to the United States in 2013, the Claimant has had exclusive use and occupation of the former matrimonial home even though they have owned the same jointly as joint tenants/proprietors.

¹⁶ Notably, there is no evidence as to the actual cost of constructing the house.

¹⁷ This figure is subject to correction. The Claimant did not say what the equity was.

¹⁸ *Richardson v Richardson*, Suit No 224 of 1984, Saint Vincent and the Grenadines, per Singh J.

¹⁹ Neither counsel extracted any information from the Defendant as to the amount being paid for alternative accommodation in the US

- [47] Counsel for the Defendant made reference to the conduct of the Claimant in terms of his alleged engagement in an extra-marital affair (with a named individual) which forced the Defendant to petition for divorce. The Claimant in cross-examination denied that he was engaged in any extra-marital affair; yet when pressed by counsel for the Defendant, he admitted that the said extra-marital affair resulted in the birth of a child who he said was three years old at the time of trial. All that being said, I am not of the view that I am required to undergo an assessment of the conduct of the parties in order to determine the entitlement and interest of either of them in the former matrimonial home.
- [48] In the end, taking the evidence as a whole, I am not of the view that I should depart from the maxim 'equality is equity' based on the substantial nature of the contribution of the Claimant. I find as a fact and hold that the parties had discussions which led to agreements as to who will pay for what and they proceeded on that footing even though they faltered somewhat in respect of telephone, water and internet bills and so forth. Further, I find and hold that the Claimant has undoubtedly incurred far more expense in respect of the disputed property; yet, by virtue of the fact that the parties held the property as joint tenants, and are presumptively entitled to an equal share of the disputed property, which presumption has not been rebutted to my satisfaction, and because there is no evidence suggesting or disclosing that at any time the parties held any common intention other than that of equality, and, being guided by the relevant legislation and case authorities, I cannot grant the Claimant's claim in terms of the apportionment claimed. Instead, I must grant the Defendant's counterclaim and order that the property be sold and the proceeds be divided equally between the parties, after the mortgage, and expenses associated with the sale are all cleared. I will also make consequential orders/declarations as I see fit.

Costs

- [49] The Defendant being successful on her counterclaim, is entitled to prescribed costs under CPR 65.5 (2) (b) (iii) where the claim is attributed a value of \$50,000.00. In accordance with the provisions of Appendix B, the quantification is 15% of that sum. This yields a figure of \$7,500.00. However, I note that ordinarily, in cases of this nature, the order is that each party pays his/her own costs²⁰. I leave it to the parties to agree costs of a lower figure, notwithstanding my proposed order as to payment of costs of \$7500.00 to the Defendant.
- [50] There are two points which I need to make before I proceed to make the required orders. First I am fully cognizant that the mortgagee is not a party to these proceedings and that this judgment will impact upon its interest in the disputed property. However, I expect that it will approve and join in the eventual sale of the property, whether it be by private treaty or by public auction, or otherwise. Second, I note that the Defendant in paragraph 21 of her witness statement indicated her willingness to accept the dated property valuation put before the court as it stood in

²⁰ I note too that this matter is brought under the CPR 2000 which does not apply to family proceedings. (See CPR 2.2 (3) (a)). If this matter can be classified as family proceedings, then it is doubtful whether CPR 65.2 (b) (iii) applies to this case so as to determine the costs payable. This issue was not canvassed by the parties.

June 2012. It would seem that she would be willing to credit the Claimant with the difference between the value of the property as it was in 2012 and its present value. I note too that the Defendant stated in her witness statement at paragraph 21 that she was prepared to accept the loan balance as it stood at the date of the divorce. I will make no order in these regard as those points were not canvassed. I leave it to the Defendant (if her conscience is affected) and her counsel to effect the willingness of the Defendant if they so desire. I note, on the other hand, that the Claimant at paragraph 11 of his closing submissions has suggested that an updated valuation of the disputed property be ordered to be done. I think that suggestion is reasonable given that the last valuation was done over four years ago i.e. 25th June 2012, and as previously stated, the property would have likely appreciated in value.

Conclusion

[51] For all the reasons stated above, I give judgment for the Defendant on her counterclaim, and I make the following orders and declaration:

- (1) A declaration that the facts of this case do not give rise to a constructive, resulting or implied trust.
- (2) An order that the joint proprietorship between Vere Cleofoster Ford and Cavel Sonia Ford in respect of a parcel of land (with dwelling house standing thereon) recorded in the land registry as: Registration Section, Ottos, Block No: 610 1791 E, Parcel 26 be, and the same is hereby severed.
- (3) A declaration that Vere Cleofoster Ford and Cavel Sonia Ford now hold the said property as tenants in common in equal shares of 50% alike.
- (4) An order that the said property be sold and the balance owing on the existing Mortgage be discharged, and the net balance from the proceeds of sale be divided equally between the parties after the existing Mortgage has been cleared and all expenses associated with the sale have been paid.
- (5) An order that such sale is to be arranged jointly between the parties' lawyers, with mutual agreement for the mechanics of sale.
- (6) An order that Mr Ford has the right and first option to purchase Ms Forde's 50% share either by public auction or private treaty, within 6 months of the date of delivery of a sealed copy of this judgment, or at some future date as agreed by the parties. If the property is sold on the open market, then all costs associated with the sale shall be borne equally by the parties.
- (7) An order that there be procured an updated valuation of the disputed property, and in that regard, the property be valued by a certified valuator at the discretion of the

parties. All costs associated with the updated valuation of the disputed property shall be borne equally by the parties.

- (8) An order that in the event that either party is unwilling or unable to execute the requisite land transfer documentation as may be required to be executed, following upon this order, then the Registrar of Lands shall be authorized to execute any such documentation on such party's behalf.
- (9) An order that Mr Forde's claim for a declaration that he is entitled to a nine-tenths share in the disputed property is denied.
- (10) Ms Forde's counterclaim for an order that she is entitled to a 50% share in the disputed property is granted.
- (11) An order that the Claimant do pay the Defendant costs of \$7500.00, with leave to the parties to agree a lower figure.
- (12) An order that there be liberty to apply.

[52] I am grateful to counsel for their helpful submissions and authorities.

PEARLETTA E. LANNS
High Court Judge [Ag]