

THE EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2014/0360

BETWEEN:

NELSON LOUISON

Claimant

and

MARGARET STEWART

Defendant

Before:

Master Fidela Corbin Lincoln

Appearances:

Mr. Benjamin Hood of Counsel for the Claimant

Ms. Deborah St Barnard of Counsel for the Defendant

2015: July, 8
September, 29

[1] **Corbin Lincoln M:** Nelson Louison is a businessman and a consultant for Consolidated Contractors Company. Margaret Stewart is employed with the Government of Grenada. Mr. Louison and Ms. Stewart were involved in an intimate and what appears to have been a tumultuous relationship for approximately 10 years.

[2] During the course of the relationship Mr. Louison provided financial support to Ms. Stewart. The relationship came to an end sometime around April or May 2014 when Ms. Stewart obtained a protection order against Mr. Louison.

[3] On 31st July 2014, a few months after the relationship was terminated, Mr. Louison commenced this claim against Ms. Stewart. At the heart of the claim is a 2008 Nissan X-Trail motor vehicle (“the motor vehicle”) registered in the name of Ms. Stewart. Mr. Louison states that he purchased the motor vehicle and seeks, *inter alia*, :

- (1) A declaration that Ms. Stewart holds the motor vehicle on trust for him;
- (2) A declaration that he has a beneficial interest in and is the beneficial owner of the motor vehicle;
- (3) An order that Ms. Stewart deliver up possession of the motor vehicle to him and sign the requisite documents to effect a transfer of registration to him.

[4] At the case management conference, the parties agreed that the sole issue for determination is whether the motor vehicle was an unconditional gift to the Ms. Stewart or whether she holds it on trust for Mr. Louison. The parties agreed further that this matter could be disposed of summarily without the need for a full trial.

The Claimant's Case

[5] Mr. Louison contends that he fully financed the purchase of the motor vehicle at the cost of EC\$65,000.00. He contends that the presumption of advancement which applies between husbands and wives or intended husbands and wives does not apply in this case as they were not married and there is no evidence that they intended to marry. He contends further that they cannot be classed as unmarried co-habitants.

[6] Mr. Louison submits that a resulting trust was created when the motor vehicle was registered in the name of Ms. Stewart. A resulting trust is created by operation of law¹ where, *inter alia*,

- (1) property is purchased in the name or placed in the possession of a person ostensibly for his own use, but really in order to effect a particular purpose which fails; or
- (2) if property is purchased in the name or placed in the possession of a person without any intimation that he is to hold it on trust, but the retention of the beneficial interest by the purchaser or disposer is presumed to have been intended.

[7] The presumption of a resulting trust can rebutted by showing that a gift was intended but in this case there was no intention to give Ms. Stewart the motor vehicle as a gift. The onus is on Ms. Stewart to prove that Mr. Louison intended the motor vehicle as a gift and she has failed to show any evidence to rebut the presumption of a resulting trust.

The Defendant's Case

[8] Ms. Stewart contends that the motor vehicle was an unconditional gift. She states that she contributed \$15,000.00 towards the purchase of the motor vehicle. Ms. Stewart submits that:

“The presumption in law is that where a husband or intended husband or intimate partner purchases property in the sole name of his wife/ intimate partner or transfers property into her sole name he does so as an absolute advancement or gift to her.”

¹ Halsbury's Laws of England, 4th Edition, Volume 48 paragraph 597

[9] I note that Ms. Stewart cites **Halsbury's Laws of England** 4th edition paragraph 612 in support of this submission. A copy of paragraph 612 was not exhibited. A copy of paragraph 611, which deals with transactions between husband and wife, was however exhibited and highlighted. Paragraph 611 only refers to a presumption of advancement between husband and wife and an intended husband and an intended wife. There is no reference in that paragraph to the presumption extending to intimate partners.

[10] Ms. Stewart submits that: *"The presumption of an advancement of gifts can be rebutted if there is evidence to the contrary. Further, if there is some contrary intention at the time, that the benefit is for the purchaser, then the property is deemed in equity to be held on a resulting trust for the purchaser."*

[11] Ms. Stewart submits further that the common intention of the parties at the time of the purchase of the vehicle must be considered and that extrinsic aids may be used to ascertain the intention. ² Having regard to all the evidence it is clear that the motor vehicle was an unconditional gift.

The Governing Law

[12] The law on resulting and constructive trusts has a long and, in my view, a complex history. In the often cited landmark case of **Gissing v Gissing** ³ Lord Diplock explained the resulting, implied and constructive trust in this way:⁴

"A resulting, implied or constructive trust - and it is unnecessary for present purposes to distinguish between these three classes of trust - is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or

² eChinaCash Inc. v Light Year Partners LLC and another, BVIHCVAP2010/032

³ [1970] 2 All ER 780

⁴ ibid page 790

conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."

[13] This formulation of the creation of a resulting, implied or constructive trust thus requires an examination of the conduct of the trustee to determine whether the trustee has so conducted herself that it would be inequitable to allow her to deny the cestui que trust a beneficial interest.

[14] Mr. Louison submits that a presumption of a resulting trust arises in this case. It is well established however that the presumption of a resulting trust is not a rule of law. The equitable presumptions of intention are "*no more than a consensus of judicial opinion disclosed by reported cases as to the most likely inference of fact to be drawn in the absence of any evidence to the contrary*".⁵

[15] In **Stack v Dowden** ⁶ Baroness Hale noted:

"Equity, being concerned with commercial realities, presumed against gifts and other windfalls (such as survivorship). But even equity was prepared to presume a gift where the recipient was the provider's wife or child. These days, the importance to be attached to who paid for what in a domestic context may be very different from its importance in other contexts or long ago. As K Gray and S F Gray, in *Elements of Land Law*, 4th edition 2005, point out at p 864, para 10.21:

In recent decades a new pragmatism has become apparent in the law of trusts. English courts have eventually conceded that the classical theory of resulting trusts, with its fixation on intentions presumed to have been formulated contemporaneously with the acquisition of title, has substantially broken down Simultaneously the balance of emphasis in the law of trusts has transferred from crude factors of money contribution (which are pre-eminent in the resulting trust) towards more subtle factors of intentional bargain (which are the foundational premise of the constructive trust) **But the**

⁵ Lord Diplock in *Pettitt v Pettitt* [1970] AC 777, at 823H

⁶ [2007] UKHL 17

undoubted consequence is that the doctrine of resulting trust has conceded much of its field of application to the *constructive trust*, which is nowadays fast becoming the primary phenomenon in the area of implied trusts." (emphasis mine).

[16] Historically, a significant number of cases in the area of implied trusts, like **Gissing v Gissing**, involved property disputes between married couples. While the principles of law are the same whether the couple is married or not the inferences to be drawn from their conduct may be different.⁷ In this case the parties were never married.

[17] **Stack v Dowden** involved a property dispute between an unmarried couple who were co-habiting. The case concerned property which was conveyed in the joint names of the parties but in the course of her judgment Baroness Hale also addressed cases where property is conveyed in the sole name of one party. She stated: ⁸

“ ... the starting point where there is sole legal ownership is sole beneficial ownership...The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all.”

[18] Lord Hope noted ⁹ that

“The advantage of this approach is that everyone will know where they stand with regard to the property when they enter into their relationship. Parties are, of course, free to enter into whatever bargain they wish and, so long as it is clearly expressed and can be proved, the court will give effect to it. But for the rest the state of the legal title will determine the right starting point. The onus is then on the party who contends that the beneficial interests are divided between them otherwise than as the title shows to demonstrate this on the facts.”

[19] **Stack v Dowden** was explained and approved in **Jones v Kernott** ¹⁰ where it was also held

⁷ *ibid* per Baroness Hale at paragraph 40

⁸ paragraph 56

⁹ paragraph 5

¹⁰ 2012] 1 All ER 1265

that the onus would be on the claimant to establish an implied trust, or what is now termed a common intention constructive trust.

- [20] In ascertaining the common intention regard is had to the parties' actual intentions, express or inferred, objectively ascertained ¹¹. In **Stack v Dowden** Baroness Hale put it this way

*The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it."*¹²

- [21] In both **Stack v Dowden** and **Jones v Kernott** the parties were unmarried co-habitants. In this case the parties are also unmarried but they did not co-habit. Notwithstanding, this difference, I find that the principles in **Stack v Dowden** and **Jones v Kernott** could be applied to the facts of this case where the parties were engaged in an intimate visiting relationship for about 10 years.

Application of the Law

- [22] Ms. Stewart is the sole legal owner of the motor vehicle. There was no express declaration of a trust. The starting point is therefore that Ms. Stewart is considered the legal and beneficial owner of the motor vehicle. The onus is on Mr. Louison to establish that there was a common intention to create constructive trust. ¹³

- [23] In ascertaining the common intention regard is had to the parties' actual intentions, express or inferred, objectively ascertained in the light of their whole course of conduct in relation to it. In Gray's text: Elements of Land Law¹⁴ under the heading: "Extrinsic aids to the discovery of intention" it is stated:

"Certain residual evidential devices exist to enable the court to discover the parties' intentions in respect of beneficial ownership and the court has recourse to these devices in the following order. First, the court may have regard to the parol evidence as to the beneficial interests intended by the parties at the date of acquisition of the

¹¹ Thompson v Hurst [2012] EWCA Civ 1752 per Lord Justice Etherton at paragraph 22

¹² paragraph 60

¹³ Jones v Kernott [2012] 1 All ER 1265

¹⁴ Kevin Gray and Susan Francis Gray, 5th Ed., para. 7.1.10 cited by Pereira JA in eChinaCash Inc. v Light Year Partners LLC and another, BVIHCVAP2010/032

legal title. Second, if such parol evidence is lacking or inadmissible or simply inconclusive, the court may draw inferences as to intention from the conduct of the parties both before and after the acquisition of the legal estate. Third, if even this fails to illuminate the relevant intentions of the parties, the court may apply certain equitable presumptions as to intention...

"These presumptions of equity are decisive of beneficial title only in the last resort and they prevail only in the absence of other more compelling evidence of actual intention. Indeed, so fragile are these equitable presumptions of intention that recent case law discloses a strong inclination to regard them as no longer applicable in the context of domestic (as distinct from commercial) property relationships."

- [24] I have had the opportunity of seeing the parties and hearing them give evidence. In considering and weighing their evidence, I remind myself of what was said by Lord Pearce in **Onassis v Vergottis** [1968] 2 Lloyd's Rep 403 at 431 with respect to dealing with the credibility of witnesses.

'Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by overmuch discussion of it with others? Witnesses, especially those who are emotional, who think they are morally in the right, tend very easily and unconsciously to conjure up legal rights that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance.

And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of the witness. And motive is one aspect of probability. All these problems compendiously are entailed when a judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

The Parol Evidence of Intention at the time of acquisition of the motor vehicle

- [25] There is no evidence that the parties had a discussion with respect to beneficial ownership of the motor vehicle and formed a common intention.
- [26] Mr. Louison states that he purchased the motor vehicle for himself but for reasons which will be addressed below he caused the motor vehicle to be "temporarily registered" in the name of the defendant. He did not inform Ms. Stewart that he was "temporarily registering" the vehicle in her name.
- [27] Ms. Stewart's evidence is that the motor vehicle was intended to be and was purchased as a gift for her as a replacement for a previous vehicle which was purchased for her by the claimant but was sold.
- [28] The parties' evidence of their intention with respect to the beneficial ownership of the motor vehicle at the time of its acquisition of the motor vehicle is in my view inconclusive.

The Parties' Conduct Before and After the Acquisition of the Motor Vehicle

- [29] The parties' parol evidence being inconclusive, I now turn to their conduct before and after the acquisition of the motor vehicle.
- [30] It is not disputed that prior to the purchase of the motor vehicle, Mr. Louison purchased a Honda CRV which was registered in the name of Ms. Stewart. Mr. Louison's explanation for registering the Honda CRV in the name of Ms. Stewart is this:

"When I was at the Licensing Department ...I met with and spoke to a woman police officer who advised me of section 6(7) of the Motor Vehicles and Road Traffic Act

Cap 201 of 1990. That provision mandated that I would have to notify the licensing authority in writing of the who had charge or possession of my vehicle every time I left Grenada. That provision made the fulfillment of the abovementioned section nearly or practically impossible so I informed the Police Officer of my peculiar circumstances. I was advised that I could temporarily register the vehicle in the name of a person who is permanently within the state of Grenada. Based on the aforementioned advise and due to what was at that time a close relationship with the defendant I had the Honda CRV temporarily registered in the name of the defendant.”

- [31] I do not find Mr. Louison’s evidence in this regard credible. It is not clear in what capacity the police officer was present at the Licensing Department. There is no evidence that it is standard procedure for police officers at the Licensing Department to advise intended vehicle registrants of section 6(7) of the Motor Vehicle and Road Traffic Act. There is also no evidence that the police officer whom Mr. Louison allegedly met is known to him. In those circumstances I find it highly improbable that an unknown police officer at the Licensing Department, without any prompting, would inform Mr. Louison of section 6(7) of the Act.
- [32] I also find it improbable that having been allegedly informed of the law by this police officer and then explaining his busy schedule to her, she would advise him to circumvent the law by ‘temporarily registering’ the vehicle in the name of someone, who according to Mr. Louison is not the true owner of the motor vehicle.
- [33] Further, I find that Mr. Louison’s evidence regarding the sequence of events inconsistent. Under cross examination he was questioned about his evidence in relation to the registration of the Honda CRV. In response he stated **“I told the police officer at Inland Revenue that my intention is to temporarily license the vehicle in my friend’s name as I was always in and out of the country and I asked if I could do that.”** This version of events suggests that Mr. Louison: (a) formed an intention to ‘temporarily register’ the Honda CRV in the name of a friend; (b) went to the Licensing Department with this intention; (c) informed the police officer he met there of his intention; and (d) asked the police officer whether he could carry out his intention of “temporarily registering” the Honda CRV.
- [34] This version of events appears to contradict his evidence in chief where he suggested that it

was the police officer - without any prompting – who brought the Act to his attention when he went to register the vehicle and, after he explained his travel schedule, it was the police officer who informed him about “temporarily registering” the Honda CRV.

- [35] In any event, the evidence is that the Honda CRV was registered in the name Ms. Stewart and was used mainly by her until it was ‘taken back’ by Mr. Louison. Under cross examination he stated:

“I took back the first vehicle because she was transporting men in my vehicle. On one occasion there were several condoms in the vehicle and pornographic magazines. One of the men who was moving around with her was harassing me and saying he was having sex in the vehicle. One night she called me back while I was overseas and told me that if I insisted that she park up the vehicle she would drive herself over a cliff and commit suicide. She continued to threaten suicide with me. I told her if she continued to threaten suicide and transport various I would take the vehicle. She showed up at my house one night. I was not home. When I arrived I saw someone walking across my yard strangely and it was her. She started to get on and make a lot of noise. She had come with the vehicle. That night I took the vehicle and parked it up. Several weeks after I told her I need to sell the vehicle. I had it parked for those weeks. When I told her that I need to sell the vehicle and I needed her to sign the transfer and she signed the transfer. There was no protest and she signed it.”

- [36] Mr. Louison states that Ms. Stewart signed the transfer documents for the Honda CRV without any protest. Ms. Stewart states that she signed the transfer because Mr. Louison promised to buy another vehicle for her.
- [37] Notwithstanding Mr. Louison’s version of the events that led him to ‘take back’ the Honda CRV and sell it he states that he fully financed the purchase of the motor vehicle in question around 2010. While he denied that he rented a car for Ms. Stewart between 2009 when the Honda CRV was sold and 2010 when the new motor vehicle was purchased he stated that he knew that *“between that period she would have had the use of a vehicle from time to time.”*
- [38] Mr. Louison states that he never intended Ms. Stewart to be the owner of the motor vehicle in question but for the same reasons given in relation to the registration of the Honda CRV (the implications of section 6(7) of the Act) he caused the motor vehicle to be registered in the name of Ms. Stewart.

- [39] He states that he wrote to the Commissioner of Police by letter dated 10th June 2010 and requested that the motor vehicle be *‘temporarily registered’* in the name of Ms. Stewart and that *“pursuant to such, the Nissan X-Trail was registered temporarily in the name of the defendant.”* There is no evidence of why Mr. Louison thought it necessary to write to the Commissioner of Police to “temporarily register” the motor vehicle in the name of Ms. Stewart on this occasion when he did not do so when he allegedly “temporarily registered” the Honda CRV in Ms. Stewart’s name.
- [40] Mr. Louison produced a copy of what he alleged is the letter he sent to the Commissioner of Police. Under cross examination he said the letter was hand delivered and he never got a response. I attach very little weight to this typed letter which bears no indication of when it was produced or that it was delivered.
- [41] More significantly, I have been unable to identify any provision in the Act for ‘temporary registration’ of a motor vehicle. A copy of the Certificate of Registration was tendered and there is no indication on this document of the motor vehicle being “temporarily registered” in the name of Ms. Stewart. Thus while Mr. Louison asserts that pursuant to his letter to the Commissioner of Police the motor vehicle was “temporarily registered” in the name of Ms. Stewart there is no evidence to support this.
- [42] In a further effort to establish that Ms. Stewart was holding the motor vehicle on trust for him, Mr. Louison states that since the purchase of the motor vehicle he gave Ms. Stewart all the money required to pay licensing fees and insurance premiums and also undertook all costs of repair and maintenance. Ms. Stewart states that she contributed to the purchase price of the motor vehicle. In my view, even if it is accepted that Mr. Louison fully financed the purchase of the motor vehicle and paid for all maintenance and associated costs this is not in itself indicative of a common intention to create a constructive trust. The evidence must be viewed in the context of the parties’ relationship and specifically the course of conduct. While Mr. Louison denied that by the general standard of living in this jurisdiction he was a man of means who provided generous financial support to the defendant, in my view the evidence clearly shows that was in fact the case. Under cross examination, he stated:

"The things I would have provided for her were things like school books and uniform for the children, school fees for the 2 children (some school terms I paid the full fee and some terms I contributed - the full amount per term for the two boys would be \$1000 to 1,200), groceries for the house, clothes for the children, give her money for clothes for herself. I would purchase some clothes for her sometimes. I paid off some debts that were challenging her. After her husband took her vehicle I rented a vehicle for her. That would have been around 2008-09. I rented it for several months because she was in a difficult condition in taking the kids to school at the time. After her divorce I assisted her to put a financial plan together to purchase land. She paid for the land but I assisted in preparing the land – like clearing land etc. She had some money which she got from her divorce but the amount of money would not have been able to build the house she wanted at the time. I drafted the financial request to the bank for her to apply for the loan. The house would have cost more than the money she had and the loan so I put in the difference. I put in about \$200,000 - 300,000.00. I bought furniture for the house I was building for myself but I stopped building my house so that I could assist her to build her house. I took my furniture which I had bought for my house and took it to her house. The furniture was taken around 2011 when the house was completed. I do not consider that I gave the furniture to her. I just left it there. I bought appliance for use in the house because that is where I am in and out anyway."

- [43] When considered in context, Mr. Louison's maintenance of the motor vehicle cannot be said to be unusual or inconsistent.
- [44] Ms. Stewart, under cross examination, denied that Mr. Louison took the motor vehicle away from her lot. She described one incident which led to her being without the vehicle for a short time. She stated that she was driving home from a restaurant when the claimant stopped her, stripped her of every piece of her clothing and took the keys for the motor vehicle. Mr. Louison's act of "taking back" the motor vehicle is not in my view indicative of a common intention that he was the beneficial owner. The evidence must be viewed in context. The evidence shows that the parties' relationship was somewhat tumultuous. The end of the relationship followed this pattern with Ms. Stewart obtaining a restraining order against Mr.

Louison in or around May 2014.

- [45] Ms. Stewart is the legal owner of the motor vehicle. Having examined the conduct of the parties both before and after the acquisition of the motor vehicle I am not persuaded that there was a common intention for Ms. Stewart to hold the motor vehicle on trust for Mr. Louison. Given the nature and extent of the financial support which Mr. Louison states he provided to Ms. Stewart over their 10 year relationship it is not improbable that Mr. Louison, who has bestowed hundreds of thousands of dollars worth of gifts on Ms. Stewart, would purchase a second hand motor vehicle for \$65,000.00 as a gift.
- [46] I find that the motor vehicle was intended to be a gift to Ms. Stewart even though Mr. Louison seeks to re-characterise it as being held on trust following the breakdown of the relationship.
- [47] In the circumstance I would dismiss the claim by Mr. Louison and award prescribed costs of \$4,125.00¹⁵ to Ms. Stewart.

Fidela Corbin Lincoln
Master

¹⁵ Using the default value of \$50,000