

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2014

CLAIM NO. SKBHCV2012/0093

BETWEEN:

CAMERON LIBURD

Claimant

and

CAROL ROUSE

Defendant

Appearances:-

Ms. Marsha Henderson with Mrs. Rhonda Nisbett-Browne of Henderson Legal Chambers for the Claimant.

Mrs. Karene D. Paul-Nisbett of Hamilton and Co. for the Defendant.

2014: December 18
2015: January 16 Re-issued

JUDGMENT

[1] **CARTER J.:** By fixed dated claim, the claimant sought the following relief:

- “ 1. *A Declaration that the Claimant is the sole owner of all that land and house situated at #94 Lime Kiln Project, Basseterre, St. Kitts (“the property”) and be granted all legal and equitable interest in said property;*

2. *An Order that the Respondent vacate the said property within 30 days of the Court's decision.*
3. *Further or alternatively a declaration as to the beneficial interests in the property;*
4. *Damages;*
5. *Costs; and*
6. *Such further and other relief as this Honourable Court deems just."*

[2] The claimant and the defendant were involved in a relationship that spanned some twenty (20) years and produced two (2) children. The claimant's Statement of Claim outlined that the claimant and the defendant, although unmarried started living together in a two bedroom chattel house (hereinafter referred to as "the chattel house") located at Lime Kiln Housing Development, Basseterre. Of much relevance to the instant matter is the claim therein that the said chattel house was financed and constructed solely by the claimant and situated on lands belonging to the claimant's mother, Cammie Liburd.

[3] In his pleadings the claimant outlined that in 2002, the claimant was allocated a lot at #94 Lime Kiln Housing Development (hereinafter referred to as "the building lot") from the National Housing Corporation. Due to ongoing altercations between the claimant's mother and the defendant, the claimant removed the chattel house from the lands belonging to his mother and placed it onto the building lot. Several additions were made to the chattel house after it was removed to the building lot, including the addition of a porch and the elevation of the roof. Further the claimant also constructed a hair salon on a portion of the building lot to enable the defendant to carry out her work as a hairdresser.

[4] The court has found it necessary to consider the facts leading to the acquisition of the chattel house and building lot individually, insofar as the manner in which the case was presented. Reference to "the property" hereinafter, includes the chattel house and building lot collectively.

[5] At the time of the allocation of the building lot from the National Housing Corporation, the claimant approached the St. Kitts-Nevis Finance Company (FINCO) for a loan to facilitate the payment for the building lot. The claimant states that he was advised to add the defendant's name to the account, in order to assist the claimant to meet the qualifications for approval for the loan.

However, shortly after doing so, the defendant's employment was terminated and this led to the application for the loan being denied.

- [6] The claimant states that he then proceeded to finance the payments for the building lot solely from his own earnings and without the assistance of the defendant.
- [7] In describing his further contribution to the property during the term of their relationship, the claimant states he has at all material times been the sole contributor to the maintenance and upkeep of the property and the household bills, which includes electricity, water and cable. The claimant has also provided for the home with the purchase of foodstuff in large quantities from overseas and the daily financial maintenance of his children.
- [8] For reasons that are not relevant to this claim, the claimant left the property, the parties' home, at #94 Lime Kiln Housing Development in January 2012 and the defendant continues to occupy the property with the minor child of the parties. On the basis of the foregoing, the claimant seeks the relief as stated in paragraph 1 hereof.
- [9] In her defence and counterclaim, the defendant denied that the construction of the chattel house was financed and constructed solely by the claimant. The defendant's assertion is that the chattel house was financed from financial contributions provided solely by the defendant. The defendant claims that the construction of the chattel house took place in or about the early 1990's, at a time when the claimant was not working and the defendant was the only one of the two (2) respective parties that was employed. The defendant states that she was already an established hairdresser. Significantly, the defendant also claims that at the time that the chattel house was constructed, it was agreed between the parties that the chattel house was for the benefit of the defendant and the claimant and was owned by the two of them.
- [10] In relation to the acquisition of the building lot, the defendant states that it was through her efforts that the building lot was acquired. She related in her defence that she first met with the Minister with responsibility for the constituency and expressed to him her interest in obtaining a lot of land from the National Housing Corporation. She asserted that the building lot was allocated

erroneously in the name of the claimant only and that when the application for the lot of land was being made and pursued, it was agreed between the claimant and the defendant that the property was being obtained and purchased for the benefit of the claimant and the defendant and that they would jointly own same.

[11] In her defence, the defendant asserts that she assisted with renovations to the house by purchasing blocks and cement with her monies and further that she regularly gave the claimant money which she earned from her employment as a hairdresser to purchase other materials for the renovations. The defendant states that from the time that the land was allocated in 2002 up until 2009 when she vacated her hair salon in down town Basseterre, every month the defendant would give the claimant monies, about EC\$400.00 from her earnings, to assist with the payments for the building lot and to maintain the home.

[12] The defendant states that it was she who carried the majority of the financial burden of the household, during the relationship that she paid for the cable and internet bills and also contributed to the electricity bill.

[13] The basis of the defendant's counterclaim was therefore relevant upon three factors: the matters set out at paragraphs 8 -11 above; the agreement between the parties that the building lot would be the site for the family home; and her role in caring for the family of the union by doing all the cleaning, cooking and washing during the period of the relationship.

[14] The defendant therefore sought:

“

1. *A Declaration that the property situate at Lot 94 Lime Kiln Housing Development, Basseterre, St. Kitts also known as Lot 94 Lime Kiln Housing Project, Basseterre, St. Kitts and with building situate thereon is owned by the claimant and the defendant jointly in equal shares or such order as to the ownership thereof as may be just;*
2. *Possession of the said property;*
3. *Further or alternatively, an Order that the Property be valued and the claimant be made to purchase the defendant's interest in the said property.*

4. *Further and or in the alternative, an Order that the said property be sold and the net proceeds of sale be divided equally between the claimant and the defendant or otherwise as may be just;*
5. Costs
6. *Further or other relief that the Court deems just."*

Issues for the Court's determination:

- [15] (i) Whether there was a common intention of the parties to share beneficial ownership of the property at #94 Lime Kiln Housing Development
- (ii) Whether the Defendant relied on this intention and acted to her detriment
- (iii) Whether the contributions made by the defendant gave her an equitable or beneficial interest in the property
- (iv) What is the extent of the beneficial interest if any.

The Law

- [16] Counsel for both sides agree, that in order for the court to arrive at a determination that the defendant has an equitable or beneficial interest in the property, the court must find evidence of a constructive trust. In submissions to the court on behalf of the parties, both Counsel referred the court to the case of **Abbott v Abbott**¹ as the authority for the test to be applied in determining whether there is sufficient evidence of a constructive trust upon which to found a claim for a beneficial interest in property. In **Abbott**, Baroness Hale quoted her own opinion on the matter of constructive trusts in matrimonial case previously stated in the case of **Lloyd's Bank plc v Rosset**² in which she said:

*"The law has indeed moved on in response to changing social and economic conditions. 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."*³

- [17] In **Rosset**, the House of Lords found that a constructive trust could be inferred even if there was no evidence of an actual agreement.

¹ [2007] UKPC 53 (26 July 2007)

² [1991] 1 AC 107

³ Ibid p.60

[18] Relevant to the facts in this matter, is the case of **Jarvis v Williams**⁴ in which Blenman J. as she then was, examined the factors to be considered in a similar case on the issue of constructive trusts in matrimonial matters. In that case, the court found that the fact that the claimant had purchased the land in question in the joint names of the parties and had then gone on to pay for the land with his own monies, did not automatically result in a finding that there was no common intention between the parties that the land was to be owned jointly. The court found that even on those facts, that there was a common intention that the parties would both have a beneficial interest in the land. The court recognized that there was no financial contribution to the purchase of the land by the respondent; however the court balanced this lack of financial contribution against the fact that the respondent had cooked, cleaned and managed the household, and made a substantial contribution to the welfare of the family during the marriage. Based on these findings the court found that the respondent had acted to her detriment based on the common intention of the parties.⁵

[19] Once the court is satisfied that there is evidence of a common intention and that based on that common intention a party has acted to his/her detriment in reliance thereon, the court may find this sufficient for a constructive trust to be implied. The extent of a party's contribution will determine the extent of the beneficial interest in the property. In **White v White**⁶, the court stated that:

"It is the law that when there is evidence before the court upon which the court could properly conclude that each of the parties is entitled to an interest in the land, the starting point is to presume that they are equally entitled to a half share or interest in the land."

[20] This Court in the particular circumstances of this case is mindful of the views of Saunders JA in **Stonich v Stonich**,⁷ when he expressed the following with regard to the manner in which financial contributions should be weighed in a determination of entitlement to a beneficial interest:

"In assessing the respective contributions of husband and wife, there was a time when one regarded the fruits of the money earner to be more valuable, more important than the child

⁴ANUHCv2008/0238 delivered on April 23 2009

⁵ Ibid at page14

⁶White v White [2001] 1 AC 96

⁷ Civil Appeal No. 17 of 2002 BVI

rearing and home making responsibilities of a wife and mother. If the man was reasonably successful at his job and the family fortunes were vastly improved, his contribution was almost automatically treated as being greater than that of the wife who remained at home. Ironically, if the man's business failed, whether through bad luck or ineptitude, his wife invariably shared equally the couple's hard times.

The court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little a contribution that is less measurable but equally important to family structure. In the vast majority of cases where these two types of contributions are in issue – that of homemaker and that of an income earner, it is the wife who has stayed at home while the husband has performed the role of breadwinner. There is therefore an element of gender discrimination role in the home.”

Court's Findings

[21] At trial, the parties did not deviate significantly from the facts as set out in their pleadings. The claimant asserts that he is the legal owner of the property, that his name alone appears on the title deed and that this Court should make a declaration to the effect that he be granted all legal and equitable interest in the property. One further issue that was raised related to the defendant's name being removed from the title deed to the building lot. The claimant was adamant that the defendant's name had only been placed on the deed in order to seek approval for the loan from FINCO. Under cross-examination he agreed that he had requested that her name be added but only for that purpose and because he had been so advised. He denied seeking to have her name endorsed on the deed or on his account at the National Housing Corporation for any other reason and denied that it was as a result of an agreement to share in the family home and the property. He recounted that after the loan was denied he sought to have the defendant's name removed from the account at NHC but was unable to do so at that time. However, after he had finished making the payments for the building lot, he was able to have her name removed from the account.

[22] In the present case, Counsel for the claimant argued that there was no agreement or arrangement between the parties, that there was no evidence of an intention for the defendant to have an

interest in the property. Counsel invited the court to examine the facts and circumstances as presented by the claimant in support of this. Specifically, Counsel pointed to the evidence that the building lot had been allocated by the National Housing Corporation in the claimant's name only. It was only subsequent to that allocation that the defendant's name was placed on the account at the National Housing Corporation. She asked the court to accept the claimant's reasons as stated in his statement of claim why the defendant's name had been added to the account and pointed to the fact that he was able to remove her name from the account when he had completed payments for the building lot, as further evidence of the lack of intention for her to have a beneficial interest in the property.

[23] Counsel for the claimant pointed to the fact that the defendant could not provide any evidence of her having made any payments to the National Housing Corporation for the building lot. Counsel asked the court to consider the difference in the parties' earning capacity at the relevant time, reminding the court of the defendant's own evidence, that at the material time, both when the payments for the building lot and were being made as well as when building and renovation works were being done to the chattel house, the defendant had admitted under cross examination that she was only doing a few heads and that she could only recall maybe having made one payment of \$600.00 towards the land. The court notes here that the defendant's recollection of the number of payments that she made directly to the National Housing Corporation varied from "I paid lots of times" to "I know I paid a couple of times" to a final declaration of: "I think I might have made a payment of \$600.00 but I don't remember."

[24] On the issue of common intention, Counsel for the defendant submitted that the court should look to the whole course of conduct of the parties. She submitted that common intention could be implied in this case from several factors, the length of time during which the parties had cohabited, that both parties had contributed to the upkeep of the home and household during the time that they lived together, the contributions made by the defendant in paying household bills and her giving the claimant amounts of \$400.00 per month during the period 2002 to 2009 to facilitate the building lot payments.

- [25] Counsel for the defendant further submitted that the court should find that the defendant had acted to her detriment in reliance on this common intention in having managed the household and taken care of the family during the time that the parties had cohabited in the belief that she had a share in the property. Counsel for the defendant referred the court to **Jarvis v Williams** previously referred to in support of this submission.
- [26] Having read the pleadings and having had the benefit of seeing both parties give evidence and be cross examined, this Court is of the view that both parties sought to embellish the extent of their contributions to the acquisition of the building lot, to the construction of the chattel house and the extent of their contributions to the joint household. This Court is satisfied and finds that the claimant made the more significant financial contribution to the acquisition of the building lot. The defendant was not in a position to make any significant financial contribution to the acquisition of the building lot at that time. The court believes the claimant when he relates how the defendant's name came to be added to the application and subsequent account at the National Housing Corporation.
- [27] The court does not believe the defendant's evidence that she gave the claimant \$400.00 per month during the period 2002 to 2009 to contribute to the payments for the building lot. The evidence does not bear out that she was in a position to contribute to the extent that she stated to the court while continuing to also provide for household expenses and upkeep. Contrary to the defendant's pleadings, under cross examination, the defendant accepted that at the relevant time she was only doing a few heads and therefore the court finds that she was not an established hairdresser. The court finds that there is some truth however, in that part of the defendant's evidence that it was she who made efforts to secure the allocation of the building lot and that she did make some financial contribution to the payments toward same.
- [28] With regard to the chattel house and subsequent renovations to the said structure, this Court finds that it was the claimant who financed and constructed the initial structure when it was situated on his mother's lands. This Court is satisfied that the defendant did make contributions toward the renovation of the chattel house once it was moved to the building lot and the defendant also contributed to the acquisition of furniture for the house and was responsible for the payment of

some of the family's bills, particularly the internet and cable bills. The court is also mindful of her contribution to the family. The claimant never seriously disputed in his Evidence in Chief or under cross-examination that the defendant was the primary caregiver for the couple's two children, which she did while continuing to be self employed and managing her hair dressing business, her shop being attached to the couple's home.

[29] In **Jarvis**, Blenman J. having considered all the relevant and particular circumstances of that case concluded that the starting point for determination of the extent of the beneficial interest as suggested in **White v White** was merely that, a useful starting point, and she departed from the "equality is equity" principle espoused therein.

[30] Having considered all the relevant matters in this case, including the length of the couples' relationship, the extent and type of contribution made by each party in the result, I find that there is evidence of a common intention that the defendant would have a beneficial interest in the property. The manner in which the payments were made for the building lot, for renovations made to the chattel house and for household expenses, are all features of the manner in which most modern families order their daily lives. It would be a retrograde step to find that a woman who has dedicated the greater part of her adult life to her family's well being and upkeep while managing her own business should be found to have no interest in property, simply because she did not in fact make the actual money payment toward that property, thereby negating the necessary everyday contributions, financial and otherwise, to the welfare of the family that she has obviously provided, thereby penalizing her because she could not now produce an accounting spreadsheet to detail the value of her contributions in that regard.

[31] This Court finds that the defendant acted to her detriment based upon the parties' common intention and that the defendant is entitled to a beneficial interest in the property, both the chattel house and the building lot.

Court's Order

[32] It is ordered and declared as follows:

1. The claimant is entitled to 75% interest in the property located at # 94 Lime Kiln Housing Development, Basseterre.
2. The defendant is entitled to 25% of the value of the said property.
3. The property is to be valued within one (1) month of the date of this Order and the claimant shall pay the defendant her share of 25% value of the property.
4. The defendant shall immediately vacate the property upon receipt of payment for her share in the property.
5. Each party to bear their own costs.

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Marlene I. Carter
Resident Judge