

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

IN THE FEDERATION OF ST. CHRISTOPHER AND NEVIS

ST. CHRISTOPHER CIRCUIT

(CIVIL)

CLAIM NO. SKBHMT2005/0005

BETWEEN:

FLORENCE MADINA TWEED aka DOLLY

Applicant/Petitioner

And

REMEO TWEED

Respondent

Appearances:

Mr. Fitzroy Eddy for the Applicant/Petitioner

Mr. Nassibou Butler for the Respondent

2013: 12th April

2013: 26th July

DECISION

[1] **THOMAS J (AG)** On 2nd March 2006 the Applicant/Petitioner filed a summons seeking determination of property interests. In the summons orders are sought in the following terms:

- (1) That the dwelling house, properties, businesses and assets all equally owned by the Respondent and the Respondent and the Applicant/Petitioner.
- (2) That the Respondent gives a full account of the business operations from March 2004 until the date of the conclusion of the account.

- (3) That the Applicant/Petitioner be given full legal title to the matrimonial house and lands at Palmetto Point.
- (4) That the Applicant/Petitioner be given full and sole ownership of the business known as Windmill Farms.
- (5) That an auditor be appointed to carry out a full audit of the businesses known as Equipment Association Limited and General Operating Agency Limited.
- (6) That the Respondent pays to the Applicant/Petitioner 50% of the value of the business known as Equipment Association Limited now trading as General Operating Agency Limited.
- (7) That the Respondent pays to the Applicant/Petitioner the sum of \$27,500 being the monies which the Respondent removed from a bank account at Bank of Nova Scotia and which monies belonged solely to the Applicant/Petitioner.
- (8) That the Respondent pays to the Applicant/Petitioner the sum of \$60,000 being half of monies which the Respondent appropriated from a fixed deposit held at the Bank of Nova Scotia.
- (9) That the Respondent pays to the Applicant/Respondent the sum of US \$20,000 being half of the monies which the Respondent received from the sale of a container of copper.
- (10) That the remainder of the joint properties and assets of the Applicant and Respondent be divided by this honourable court in such sum or sums as the court deems just.
- (11) Or in the alternative, that a receiver be appointed to take over the operations of the businesses owned by the Applicant and Respondent. That the receiver sells the businesses of the Applicant and Respondent and divides the net proceeds of sale equally between the Applicant and Respondent.
- (12) That the Applicant/Petitioner be given custody of the three minor children with joint custody to the Respondent and that the three minor children are to reside with the Applicant/Petitioner in the matrimonial home.

- (13) That the Respondent pays to the Applicant/Petitioner the sum of \$1800 per month for the maintenance of the three children under the age of 18 years.
- (14) That the Respondent pays to the Applicant/Petitioner the sum of \$1200 per month for the maintenance of the Applicant/Petitioner.
- [2] The summons is supported by an affidavit of the Applicant in which the circumstances in which properties, movable and immovable were purchased and also the circumstances in which businesses were established. Also deposed too is the role and duties in relation to the various businesses.
- [3] On 23rd March 2012 the Respondent filed his affidavit in defence and in opposition to the Petitioner's affidavit in support seeks to respond to the latter affidavit and to bring his own perspective on the issues.
- [4] Finally, on 21st June 2012 the Petitioner in a further affidavit responds to the Respondent's affidavit.
- [5] Based on the pleadings the issue for determination is whether the properties (real property), other buildings, lands, businesses and assets acquired during the marriage of the Petitioner and Respondent are owned in the manner contended by the Petitioner or in the manner contended by the respondent:
- (1) Matrimonial home situated at Palmetto Point/Ottley's.
 - (2) Land at Milliken Estate containing by 2.172 acres. Pleasant Ville Housing Canada Estate, Hummingbird Development, Camps, lease of land at Canada Estate, Taylor's Range.
 - (3) Business Equipment Association Ltd., Insta Tyre World and Windmill Farms, General Operating Agency Ltd.
 - (4) Stock in trade of Equipment Association.
 - (5) Funds.
 - (6) Liabilities

Concerning of the Parties

- [6] The Petitioner has mothered four children who in 2006 were aged 19, 14, 11 and 8.

- [7] According to the Respondent's affidavit in defence, the Respondent when he met her worked as a data entry clerk and he taught her to drive a motor vehicle. This is not disputed.
- [8] The dispute comes from the Petitioner's claim to be financial controller of Equipment Association and also Tweed and Associates. She also contends that she was taught her certain mechanical skills by her brother who is a qualified mechanic.
- [9] These contentions are contradicted by the Respondent who deposed that the Petitioner functioned as a secretary at Equipment Association and that she never displayed any mechanical skills while they were together. More to the point, however, the Petitioner has not given any evidence of qualifications or experience in accounting or even book-keeping to be asked to perform duties of financial controller.
- 10] The Respondent, on the other hand, says that he got basic training in mechanics in secondary school and then he worked at garages in St. Kitts, Tortola and at one garage in St. Maarten for four years. And that during this he learnt to repair and rebuild engines, transmissions and electrical systems of motor vehicles, including heavy duty machinery and vehicles.
- [11] The Respondent further deposed that on his return to St. Kitts in 1983 he, in partnership with his brother, set up S & B Tweed Garage and dealt with heavy duty equipment for the most part.
- [12] It is of some importance to note that the business identified by the Respondent is S & B Tweed Garage which was owned by him and his brother which was established after he returned to St. Kitts after working in St. Maarten

Credibility of the Petitioner

- [13] The Court finds it necessary to address the Petitioner's credibility or lack of it. This is because there are a series of statements in the various affidavits sworn by her which on the evidence are patently false.

1. The Exhibit FMT2¹ has no bearing whatsoever on the issue of the Petitioner's credit card being debited in favour of a supplier of vehicle tyres. The document shows a "new balance" of \$34,897.65 without any mention of a supplier of tyres.
2. In her affidavit filed on 21st June 2012 the Petitioner deposes that she was office manager of S & B Tweed Associates which entity never existed.
3. The Petitioner deposed that she manages all three businesses in this matter, but in fact Windmill Farm is 6 to 7 miles away from Equipment Associates Ltd. and Insta Tyre World. She also deposed that she is the mother of the four children² of the marriage, cooked, washed and cleaned the house, did the landscaping and add flowers all in one. However, the Respondent deposed that he did the landscaping and built the green house.³ It is further deposed by the Petitioner that she was Country Manager for Avon products with head office being in Caguas, Puerto Rico.⁴
4. The Petitioner⁵ states that she was taught "mechanical skills" by her brother who is a qualified mechanic. But the Respondent's answers that assertion is that when he met the Petitioner she worked as a data entry clerk and he taught her to drive a motor vehicle (no heavy equipment.) it is also the Respondent's evidence that during the time they were living together the Petitioner never displayed any mechanical skills.

The Governing Law

¹ Petitioner's affidavit filed 21/06/2012 at para. 36

² Two of whom were minors at the time of the swearing of the affidavit, being 2nd March 2006

³ Affidavit filed 23rd March 2012 at para. 38

⁴ Petitioners Affidavit filed 21/6/2012 at para. 23

⁵ Affidavit in Support filed March 02 2006

[13] In seeking to deal with the sharing of property in the context of a marriage that has broken down, the courts have over time been guided by the basic principle of fairness and equality⁶. To this end, various dicta abound. And the following questions are on point:

[14] In **Mc Farlane v Mc Farlane** Lord MacDermott said this:

"In the absence of proof to the contrary a spouse who has acquired the legal title of the property purchased with the aid of a substantial monetary contribution from the other spouse will hold the property subject to a beneficial interest therein belonging to the other spouse. This may be the result of some binding agreement between the spouses or it may flow from a resulting trust in favour of the contributing spouse who is without legal title. In certain circumstances this proposition may apply in favour of a spouse without the legal title if that spouse has contributed to the purchase indirectly and in a manner which has added to the resources out of which the property has been acquired; but if an indirect contribution is to earn a beneficial interest in the property acquired it must be the subject of such agreement or arrangement between the spouses as shows a mutual intention that the contributions or one of the other will go to create a beneficial proprietary interest in the contribution."

[15] In the case of **Lloyd's Bank v Rosset**⁷ the following dicta emerge:

"The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to the acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions

⁶ Per Lord Nicholls of Birkenhead in *White v White* [2001] AC 59

⁷ [1991] 1 AC 107

between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel. In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do."

[16] And in **Stack v Dowden**⁸ Lord Walker reasoned that:

"In a case about beneficial ownership of a matrimonial or quasi-matrimonial home (whether registered in the name of one or two legal owners) the resulting trust should not, in my opinion, speak as a legal presumption, although it may (in an updated form which takes account of all significant contributions direct or indirect, in cash or in kind) happen to be reflected in the parties common intention."

[17] Lord Walker in **Abbott v Abbott** placed the issue in a broad modern context by saying that:

⁸ [2007] UKHL 17 at para. 31.

“The law has indeed moved on in response to changing social and economic conditions. The search to ascertain the parties shared intentions, actual inferred on with respect to the property in the light of their whole course of conduct in relation to it.”

The Narrower focus of the Law

[18] Based on Submissions on behalf of both sides it is accepted that the import of the law relating to constructive trust is generally applied in the determination of the division of property acquired during the marriage by both parties. There are numerous cases⁹ on the issue and learned counsel for the Petitioner as cited extracts from some of these cases which reflect the matter of, *inter alia*, the common intention of the parties. The position is summarized by learned counsel for the Respondent as follows:

“4. Both the House of Lords and the Privy Council decided that where there is sole legal ownership there is sole beneficial ownership and where there is joint legal ownership there is joint beneficial ownership and a heavy onus is placed on the person seeking to show that the beneficial ownership is different from the legal ownership. In sole legal ownership cases it is for the non-owner to show that he has any interest at all. In joint legal ownership cases it is for the joint owner to show that he has other than a joint beneficial interest. Vide Baroness Hale in *Stack V. Dowden* at paragraph 56.

5. In ascertaining the parties shared or common intentions with respect to the property in the light of their whole course of conduct in relation to the property certain factors are relevant namely:-

- (i) **Financial contributions** to the acquisition of the property.

⁹ Some of the leading cases cited by both side include *Pettitt v Pettitt* [1970] AC 777, *Gissing v Gissing* [1971] AC 866; *Abbott v Abbott* [2007] UKPC 53, *Lloyds Bank v Rossett* [1991] 1 AC 107, *DeFreites v DeFreites*, Claim No. ANUHCv 2008/0476, *Stack v Dowden*, *Struch v Struch* BVI Civil Appeal No. 17/2002.

- (ii) Advice or discussions **at the time of the transfer** which throw light upon their intentions.
- (iii) How the purchase was financed both initially and subsequently?
- (iv) Contributions in kind i.e. substantial manual labour."

Matrimonial Property Situate at Palmetto Point/Ottleys

[19] For the Petitioner the submission on this issue reads thus:

"The matrimonial home located at Ottley's Height, Palmetto Point, St. Kitts was constructed in 1990 – 1991. It has not been registered. The matrimonial home is valued at \$365,000.00. Building #1 at \$166,000.00. Building #2 valued at \$150,000.00.

Affidavit of Petitioner 2nd March, 2006 at paragraph 27.

We submit that this should be divided 50% to Mrs. Tweed and 50% to Mr. Tweed."

[20] In light of the content of the Petitioner's affidavit, learned counsel for the Respondent makes the following preliminary observation with which the court agrees:

"6. In the instant case the Petitioner is seeking a declaration that "the dwelling house, properties, businesses and assets are all equally owned by the Respondent and the Petitioner." Yet nevertheless, she seeks an Order that she be **given full legal title** to the matrimonial house and lands at Palmetto Point, Ottley's Yard **and full and sole ownership** of the business known as Windmill Farms.

7. The expression "equally owned by the Respondent and the Petitioner" means that the Petitioner is contending that she is **beneficially entitled to half share or interest** in the properties, buildings, businesses and assets **acquired during the marriage**.

But the mere fact that she is also asking that the said property at Palmetto Point Ottley's Yard and the business known as Windmill Farms be transferred to her as sole legal and beneficial owner shows that despite her allegation of joint legal ownership, the court should nevertheless find that she alone is sole legal and beneficial owner thereof. **The onus upon her to prove that she is sole legal and beneficial owner would be enormous if not impossible** and the facts in this case and the applicable law militates against such. The court cannot simultaneously find that she is entitled to a beneficial half share or interest in the property at Palmetto Point and Windmill Farm businesses and still entitled as sole legal and beneficial owner thereof.

8. In Order to discharge that heavy onus placed on her the Petitioner must by cogent evidence show that the shared or common intentions actual inferred or imputed of herself and the Respondent with respect to the property at Palmetto Point Ottley's Yard and the Windmill Farm business in the light of their whole course of conduct in relation to the said property and business are that the Petitioner should have sole absolute beneficial interest in the property and business."

[21] Specifically with respect to the property in issue, learned counsel for the Respondent in his submissions deals comprehensively with the affidavit evidence and the various exhibits as relevant. The submissions begin with the matter of the title to the land.

- "(1) At paragraph 14 of his Supplementary Affidavit the unchallenged statement of the Respondent is that **no deed, conveyance, certificate of title or other document of title** for this property has ever been issued to or obtained by either party and that title thereto still vests in the Government of St. Kitts and Nevis.

- (2) However, the evidence does show that there has been a **sale** of the said lot of land which comprises the property **to the Respondent** and therefore he **is entitled to the transfer of the title to himself alone** which would make him sole owner thereof.
- (3) At Paragraph 27 to 31 of his Affidavit in Defence filed on the 23rd March 2012 the Respondent explains the circumstances in which he was able to purchase the said lot of land at Palmetto Point. His said paragraph 27 is admitted in tota by the Petitioner at Paragraph 28 of her Affidavit in Reply filed on the 21st June 2012. Moreover, exhibit "R.T. 5" refers to the Respondent's certificate of exhibit filed 23rd March 2012 shows clearly that **the Respondent made two applications to purchase the said lot of land** the second application being a follow up to the first application."

[22] The submissions go on to cite the following:

1. The Respondent made two applications to purchase the lot: 18th August 1985. It was supported by the area manager and agreed to by the agricultural manager.
2. The Parties were married on 2nd November 1986.
3. The second application to purchase the said land was made by the Respondent on 14th August 1987 again alone.

[23] The submissions then continue as follows:

- "(8) The **Letter of Approval** dated the 11th November 1987 of the **Respondent's Application** in the bundle referred to as "R.T.5" of the Respondent's Certificate of Exhibits filed 23rd March 2012 **was addressed to the Respondent alone.** The **Letter requesting a new survey plan** dated **21st April 1988** referred to in the said bundle as "R.T.5" of the Respondent's Affidavit of Defence was **addressed to the Respondent alone.**

- (9) However, the letter confirming completion of payment for the said land dated 28th January 2002 in the bundle referred to as "R.T.5" was addressed to "Mr. and Mrs. Sylvester Tweed." However, this is not evidence of any agreement arrangement or understanding between the parties.
- (10) At Paragraph 24, 29 and 30 of his Affidavit in Defence the Respondent explained in some detail how the purchase price for the land was paid by him. At paragraph 27 of her affidavit in Support filed the 2nd March 2006, the Petitioner states that she and the **Respondent used the proceeds of their labour** and acquired the matrimonial home Palmetto Point and at paragraph 30 of her Affidavit in Reply filed 21st June 2012 she states that the deposit was made from joint **resources** and that she signed an agreement with Ashton Leader of the Central Housing Authority to transfer the monies owing on the Bird rock project to the lands at Ottley's Yard and Mr. Charles Williams, Permanent Secretary received the agreement and approved the transfer of land at Ottley's in lieu of payment.
- (11) It is to be noted that Mr. Charles Williams' letter of 28th January 2002 makes no mention of an agreement between the Petitioner and Mr. Ashton Leader. **Mr. Charles Williams' letter is supportive of the Respondent's version of the payments for the land.** Mr. Charles Williams was not Permanent Secretary but **Mr. Aubrey Hart** was. The Application was approved by **Mr. Aubrey Hart not Charles Williams.** Vide the said bundle marked exhibit "R.T.5."
- (12) Also the deposit of \$4,000.00 paid on the 22nd June 1989 could **not** have come from any **"joint resources"** for there were **no joint resources** at the time of Equipment Association Ltd. was formed on the 17th November 1988. Vide exhibit "F.T.1" referred to in the Petitioner's Certificate of Exhibits filed 2nd March 2006

and was just getting on its feet so much so that on the 1st September 1989 it obtained a financial arrangement from National Bank to provide working capital. Vide Exhibit "F.T.8" referred to in the Petitioner's Certificate of Exhibits filed 23rd June 2006.

(13) Moreover, paragraph **31 of the Respondent's Affidavit in Defence** is **admitted in tota** in paragraph 32 of the Petitioner's Affidavit in Reply filed 21st June 2012. Here it is clear that the **decision to erect the matrimonial home on the land at Palmetto Point Ottley's Yard was that of the Respondent alone**. There is **nothing** to indicate any agreement or discussions between the parties to erect a matrimonial home on the said land. It was the Respondent's **unilateral decision to erect the dwelling house** now called the "matrimonial home" on the said land and this decision was made by the Respondent **over one year prior to his marriage** to the Petitioner.

(14) However, after having admitted paragraph 31 and 32 of the Respondent's Affidavit in Defence the Petitioner stated that she paid the hired hands and cooked lunch for them as the work was done on weekends and holidays and that James Taylor was the contractor who built the water plant. It is not clear whether she is saying she paid the hired hands to erect all the buildings or to erect the water plant only. But it is to be noted that it was the **Respondent's unilateral decision to build the matrimonial home and also a building to accommodate the water plant**.

The Respondent obtained **estimates** for the construction of water plant (vide exhibit "R.T.6 (a)" referred to in the Respondent's Certificate of Exhibit filed 23rd March 2012) and at paragraph 33 of his Affidavit in defence he said, "I provided all the labour for the construction of the above buildings." This has not been denied and the Respondent at paragraph 16 of his Supplementary

Affidavit filed on 9th August 2012 denies that the Petitioner paid the hired hands.

At paragraph 54 of his Affidavit in defence the Respondent referring to items 32 (i) and (ii) mentioned in the Petitioner's Affidavit in support filed 2nd March 2006 said, "Items 32 (i) and (ii) I personally with the assistance of hired hands built these and with no assistance whatsoever from the Petitioner. I with some of my own monies and without any financial assistance from the Petitioner purchased items 32 (iii), (iv) and (v)." Items 32 (i) and (ii) mentioned in paragraph 32 (i) and (ii) of the Petitioner's said affidavit in support refer to "an unfinished building to house the water plant and also the building presently used to house the water plant."

The Petitioner at paragraph 55 of her Affidavit in Reply filed on 21st June 2012 states, "in relation to paragraph 54 I make no admission or denial with regard to the contents thereof." Yet at paragraph 33 of her said Affidavit in Reply she said, "I state that the hired hands were paid me." The Petitioner's credibility is questionable.

Also at paragraph 23 of her Affidavit filed 23rd June 2006, the Petitioner alleges that "The lands," (meaning land at Palmetto Point Ottleys' Yard) "were given to the Respondent and I by the Government in lieu of monies due and owing to us for work we had done for the Government in clearing the Bird Rock Playing Field." If what she alleges above is correct then the Petitioner has also alleged that she was office manager while the Respondent was responsible for operators, mechanics and fieldwork, then what work she did in clearing the playing field?

- (15) It is respectfully submitted that the evidence clearly shows that there was no discussion, agreement or arrangement between the parties to purchase the Property at Palmetto Point Ottley's Yard

and that the acquisition of the property at Palmetto Point Ottley's Yard was financed both initially and subsequently by the Respondent who also personally provided substantial manual labour and who over one year before the marriage to the Petitioner purposed in his heart to acquire the land and build thereon. The irresistible conclusion is that the Respondent is entitled to sole legal and beneficial ownership of this property."

Conclusion

- [24] It will be recalled that in **Lloyd's Bank v Rosset**¹⁰ the width of agreement was laid wide in terms of common intent as a constituent of constructive trust. It calls for express discussion, however imperfectly remembered and however imprecise their terms may have been. This would have been the onus on the Petitioner. The evidence points in the direction of the job to clear the land that eventually became the Kim Collins Playing Field which in term relates to the acquisition of the land to build a home that eventually became the matrimonial home. The evidence shows further that the job was undertaken by the Respondent using heavy equipment, including trucks. Yet in this context the Petitioner speaks of 'one resources'. Indeed the Court accepts the Respondent's evidence that he alone provided the \$4,000.00 for the down payment on the land. The evidence also shows that the Petitioner is a person who is careful with records which would be relevant in this context.
- [25] On the whole, the Petitioner has been unable to give evidence of any agreement, however imprecise, concerning the property. The fact that the Petitioner may have cooked some meals for the workers is not 'substantial' to enable her to satisfy the law.
- [26] It follows that the court accepts the submission on behalf of the Respondent that he is entitled to sole legal and beneficial ownership of the said property.

¹⁰ Loc cit

Land Situate at Milliken Estate

- [27] The Petitioner is seeking a declaration that the land situated at Milliken Estate, containing 2.172 acres is owned by the Respondent and herself 50/50. But the respondent is seeking a declaration that the said land is owned to them in the ratio of 75% to him, 25% to the Petitioner.
- [28] By virtue of the Certificate of Title both parties are recorded as joint tenants. The Petitioner does not give any evidence as to her contribution to the acquisition of the said property. She merely refers to value.
- [29] The Respondent at paragraph 50 (iii) deposes that:
"The land at Milliken estate was paid for partly by cash from Equipment Association Limited and partly by services rendered by one personally at the request of John Napier. This property is held by Certificate of Title in my name and the Petitioner's name as joint tenants. My personal fees for the work done was \$12,000.00."
- [30] For the Petitioner it is submitted that the property should be divided 50% to the Respondent and 50% to the Petitioner.
- [31] The main submissions on behalf of the Respondent are as follows:
"8. In the instant case the onus is on the Respondent to show that he is entitled to 75% of the said land. The Petitioner stated at paragraph 27 of her Affidavit in Support above mentioned that the Respondent and herself used the proceeds of their labour to acquire the said land. The evidence shows that the Petitioner was an employee of Equipment Association Ltd. and was paid monthly. However, she fails to say the manner or way in which the proceeds of their labour was used, how much of the proceeds of their labour was used to acquire the land and in what

proportions. There is no evidence as to the cost or price of the land.

9. However, the Respondent assisted in this regard by asserting that the land was paid for partly by cash from Equipment Association Ltd. and partly by services rendered by him personally at the request of John Napier.
10. It has been admitted on all sides that Equipment Association Limited had no assets when formed, the shares in the company were never paid up, the company was struck off the Register of Companies in 1996 and the Respondent in practice and in reality operated the business as a sole trader. Vide paragraph 15 of the Petitioner Affidavit in Reply filed 21st June 2012 where she admits in tota, and without reservations, paragraph 13 of the Respondent's Affidavit in Defence.
11. Accordingly, if as the Respondent says and is admitted by the Petitioner that the land was [aid for partly by funds from Equipment Association Ltd. and partly by services rendered by him personally then the contributions towards the purchase price of the land was unequal i.e. the Respondent providing cash and significant manual labour. It is not known precisely what the Petitioner provided.
12. There could therefore have been no common intentions that the parties should own the land 50/50. The Respondent certainly contributed much more than the Petitioner if not all that is required for the acquisition of this land."

Conclusion

[32] The law is that joint tenants the legal and beneficial ownership is the same unless a contrary intention is established.

[33] But while both parties admit that the land was paid for with proceeds from Equipment Association and services rendered by the Respondent, the question of

the proportions becomes problematic despite the fact that the Respondent deposes that his services were valued at \$12,000.00. More than that, there is no evidence as to the value of the land.

[34] Given that Respondent's contention, the burden rests on him to show that the parties intended the legal ownership to be different from the beneficial ownership.

In this context, Lord Neuberger had this to say in relation to extent of beneficial ownership on acquisition but different contributions:

“[W]here the only additional relevant evidence to the fact that the property has been acquired in joint names is the extent of each party to the purchase price, the beneficial ownership at the time of acquisition will be held in the same proportioning as the contributions to the purchase price.”

[35] As noted above, there is no evidence as to the purchase price. And as far as the contributions are concerned, apart from Respondent's evidence that his labour was worth \$12,000.00 (for the work done for the original owner of Milliken Estate) there is no other evidence as to contributions to satisfy the requirements of the law.

[36] Accordingly, the joint legal and beneficial ownership remains.

Equipment Association Limited

[36] With respect to this business (which was struck off the Register of Companies in 1996) Petitioner seeks a declaration that the said business owned jointly by herself and the Respondent in equal shares. The Petitioner also seeks an order that the Respondent pays her 50% of the value of this business.

[37] For his part, the Respondent seeks a declaration that he is the sole owner of the business.

[38] Based on the affidavit evidence the court makes the following findings of fact:

1. The business of Equipment Association Limited ('EAL') was the servicing of all kinds of heavy duty vehicles and related equipment.
2. EAL had no assets when registered in 1988 and was operated by the Respondent as a sole trader.
3. The Petitioner was an employee of EAL and was not a director and there is no evidence that she received director's fees as claimed. Various documents¹¹ show the Petitioner signed documents as secretary.
4. The Petitioner did not become a shareholder of EAL by virtue of a verbal agreement between herself and the Respondent. In any event there is no exhibit in this regard. And there is nothing in the evidence to suggest any such agreement.
5. The court accepts that the Petitioner became a shareholder of EAL in order to satisfy the requirements of the Companies Act with regard to a private company.
6. There is nothing in the evidence to suggest that the shares were paid up or share certificates issued.
7. The Petitioner has not provided any evidence of any discussion or agreement with respect to the sharing of the share capital of the company.
8. The Respondent required the Petitioner to sign the Articles of Agreement on behalf of the company¹² which was not challenged by the Petitioner.
9. There was never a business operated by the Petitioner and Respondent trading as Tweed's Associates as contended by the Petitioner. The business known as S & B Tweed Garage Ltd. was owned and operated by the Respondent and his brother. And

¹¹ Exhibits FT2, FMT (1) (b) FMT (1) (e)

¹² Para 7 of the Supplementary Affidavit filed on 9th August 2012

Tweed Garage was established after the Respondent returned to St. Kitts in 1983 prior to his marriage to the Petitioner in 1986.

10. S & B Tweed Garage was engaged principally in servicing heavy equipment. Both brothers are trained mechanics.
11. There is no evidence that the Petitioner had any training or experience in accounting or office management and related fields.
12. The Petitioner does not say how long she spent learning her mechanical skills or what she learnt over the unknown period and what type of heavy duty vehicles and related equipment she worked on.
13. The Petitioner did not exhibit any document to show that she received fees as a director of EAL.

Submissions

[39] In submissions on behalf of the Petitioner learned counsel places emphasis on the Petitioner's contention that she was financial comptroller of EAL from its inception and also operations manager. According to the submissions, Mrs. Tweed owns 3000 shares and Mr. Tweed owns 3000 shares.

[40] The submissions on behalf of the Respondent are as follows:

1. The fact that the Petitioner performed office work for the business does not entitle her to a beneficial interest in the business or make her an owner in the business.
2. The Petitioner's contribution to the everyday running of the company cannot be construed as a constituent of a common intention but it indicates that the Petitioner was an employee.
3. The Petitioner made no financial or other contribution to start the business. She contributed neither finance, goods or labour.
4. It was the Respondent alone who contributed massively to the start of the business for all the assets (including finance) mechanical tools, heavy duty equipment including vehicles and

other assets that the Respondent obtained after the dissolution of S & B Tweed garage Ltd. were deposited into and used in the business of Equipment Association Ltd. from its inception.

5. The affidavits do not disclose any evidence of any discussion between the parties at the start of the business from which any common intention could have arisen.
6. The Petitioner did contribute to the running of the company but this cannot be considered as an ingredient of common intention but rather it demonstrates that the Petitioner was an employee of the company.
7. The petitioner did receive a salary of \$2,900.00 as an employee of the company.

[41] The Submissions on behalf of the Respondent continues thus:

A case in point is De Freitas vs. De Freitas Claim No. ANUHCV2008/0476 where Thomas J. at paragraph 101 thereof said, "It is a determination of the Court that in the absence of a common agreement or understanding and also the determination of the Court that the Claimant did not significantly alter her position by signing the guarantee. No trust is created whereby the shares in the Company are held in trust for the Claimant and the Defendant."

At paragraph 102 the Honourable Judge continued, "The conclusion may also be based on the reasoning that the requirements of common intention and detriment are conjunctive requirements and one requirement being satisfied one requirement renders the contention nugatory."

In the instant case there is **no common intention** arising from any agreement or understanding between the parties. Even if it can be said that there was detriment on the part of the Petitioner, **she has not significantly altered her position in reliance on any agreement**. The Bank agreed to make advances from time to time the Company and

either of the guarantors can discontinue the guarantee at any time by written notice to the Bank. The financial arrangement to make advances from time to time was made **after** the business of equipment Association Ltd. was established and operational. The purpose of the financial arrangements was to provide working capital for the Company as and when required and not to initiate or commence business. There is no evidence that the Bank even made any advances to the Company. There is no evidence that the Petitioner even contributed anything towards the financial arrangement. There is no evidence that the Petitioner was even called upon to pay anything to the Bank as guarantor. Despite the fact of his guarantee the Petitioner admitted that the business of Windmill Farm which she is managing was and is a striving, profitable business."

Analysis and Conclusion

[42] This issue again falls to be determined on the laws relating to a constructive trust. This means that onus falls on the Petitioner to show that with respect to EAL there was a common intention between her and the Respondent to establish the business and that she suffered.

It is clear that the Petitioner's main contention is that she worked in the business at a high level and this entitles her to a share thereof. This is correctly rejected by learned counsel for the Respondent in his submissions.

Even in this connection, the court has concluded that the Petitioner's evidence is not entirely credible. Thus, given her contention, as to her duties, this is rejected by the court in light of the evidence as a whole and in particular paragraphs 21 – 24 of the Respondent's affidavit.

"21. I deny paragraph 8 of the Petitioner's Affidavit. The Petitioner was not a part of S & B Garage Limited. She was never the financial controller of the said business. She was only the secretary of Equipment Association.

22. I deny paragraph 8 of the Petitioner's affidavit. The Petitioner was never a director of Equipment Association. A Director is not the owner of a business. At exhibit FT2 she signed as secretary. She was not paid the sum of \$2,900.00 as a Director.
23. I deny paragraph 9 of the Petitioner's affidavit. She was never the manager of Equipment Association. As the secretary she makes up pay roll and time sheet, trained staff, she typed the estimates for the jobs performed and rental of equipment, did the billings, types and fixes documents for ordering equipment and machinery, and did the accounts.
24. The Petitioner was not the financial controller, she did not prepare estimates for jobs, she did not purchase or order heavy equipment and machinery, and did not oversee work done on the job site."

[43] In terms of the formation and operation of EAL the evidence is that it was incorporated in 1988 and was formed from the finances and equipment from the Respondent's share of S & B Tweed Garage when it was dissolved and the assets distributed. This is not disputed by the Petitioner as, inter alia, she was not part of S & B Tweed Garage or EAL. And according to the Respondent's affidavit¹³ the allotted shares of EAL were never paid up. The company was never capitalized and as such operated as a sole trader using the name EAL.

[44] The court therefore agrees with the submissions on behalf of the Respondent that no evidence of common intention¹⁴ arises with respect to EAL in terms of the whole course of conduct in the formation of the said company. And although the Petitioner worked at EAL that alone does not constitute a basis upon which an interest may be earned. That is settled law.

¹³ Filed 30th March 2006

¹⁴ De Freitas v De Freitas Claim No ANUHCv 2008/476. Stack v Dowden [2007] UKHL17, Abbott v Abbott PL Appeal No. 142/2005

[45] In term of detriment suffered by the Petitioner, she holds on to the guarantees signed by her and the Respondent as being noted in terms of the law. But the signing of a guarantee is in a real sense contingent on the failure to repay the money advanced. And as counsel for the respondent submits there is no evidence of any payment by the Petitioner under any of the guarantees signed. If there was the Petitioner has not revealed it to the court, which is unlikely.

[46] It is therefore the conclusion of the court that the Petitioner is not entitled to any share in Equipment Associated Ltd, because the evidence does not show an actual or inferred common intention or detriment suffered by the Petitioner.

Stock in Trade of Equipment Association Ltd.

[47] Both parties have sought to give details of the inventory¹⁵ of Equipment Association Ltd but the determination of the court is that the company's is owned by the Respondent and as such the question of the ownership of assets becomes academic.

[48] The following submission on behalf of the Respondent is to the point.

- "10. Based on the Respondents assertion at paragraph, 52 of the Affidavit in Defence and paragraph 28 of his Supplementary Affidavit no stock-in-trade or goods etc of Equipment Association Ltd was transferred to General Operations Agency Ltd [GOAL].
11. Moreover, as admitted on all sides GOAL was formed, established and incorporated after the breakdown of the marriage as a brand new company and not just change of name from Equipment Association Ltd. It is very obvious that there could have been no agreement or understanding between the parties that the Petitioner should have a beneficial interest in or be an owner of the business GOAL."

¹⁵ Petitioner: Paragraph 30 – 30 of the Affidavit in Support filed 2nd March 2006

Respondent : Paragraph 52 of the Affidavit in Defence filed 22nd March 2012 and Paragraph 28 of his Supplementary affidavit filed 9th August 2012

- [49] By virtue of the determination that the Respondent is the sole owner of Equipment Association Limited it follows that the stock in trade is owned by the Respondent also.

Windmill Farm

- [50] Windmill Farms Ltd is the bottled water business which was set up in 1999.

Submissions

- [51] The submissions on behalf of the Petitioner are in these terms:

“This business is registered in the name of Mrs. Tweed. It was established by Mrs. Tweed and Mr. Tweed on the understanding that it would be her company. Mr. Tweed assisted in setting up and installing the machines. Upon completion Mr. Tweed made no further contribution to the business. Mrs. Tweed made all her purchases and ran the business.

We submit that this should be divided 50% to Mrs. Tweed and 50% to Mr. Tweed.”

- [52] The submissions on behalf of the Respondent recites the fact that both parties are seeking a declaration that this business is jointly owned by them in equal shares, but the Petitioner counters by seeking an order she is the sole owner of the business.

- [53] The submissions on behalf of the Respondent continue:

“2. If this Honourable Court declares that the business is jointly owned in equal shares by the parties then it is respectfully submitted that this Honourable Court cannot order that one of the parties be given full and sole ownership of the business.

3. The law is that where there is **joint legal ownership** there is also **joint beneficial ownership** in the absence of evidence to the contrary. However, the **parties themselves** have already

decided that the **business is owned by them in equal shares** and this seems to be an end of the matter.

4. It is abundantly clear upon perusal of paragraph 12 of the Petitioner's Affidavit in Support filed on 2nd March 2006, paragraph 8 of the Respondent's Affidavit filed on 30th March 2006, which is not denied and paragraph 31 of the Respondent's Affidavit in Defence filed on 23rd March 2012, which is admitted to tota and without reservations by the Petitioner at Paragraph 32 of her Affidavit in Reply filed 21st June 2012, paragraph 27 of the Respondent's Affidavit filed on the 30th March 2006, paragraph 34 of the Respondent's Affidavit in Defence filed 23rd March 2012, a substantial portion of which is admitted by the Petitioner at paragraph 35 of her Affidavit in Reply filed 21st June 2012 and paragraph 54 of the Respondent's Affidavit in Defence to which the Petitioner at paragraph 55 of the Affidavit in Reply filed 21st June 2012 stated that she makes no admission or denial and lastly paragraph 13 of the Petitioner's Affidavit in Support filed 2nd March 2006.

- (i) That although the Petitioner has been managing this business for a long time the Respondent contributed **massively both financial and manually** to this business and has never received any of the profits from the business from its inception.
- (ii) That the business was and is a striving profitable business, although the Petitioner admits this at paragraph 5 of her Affidavit in Support filed 2nd March 2006 and denies it at paragraph 35 of the Affidavit in Reply filed 21st June 2012 and neither admits or denies it at paragraph 9 of her Affidavit in Response filed 23rd June 2006. The Petitioner's credibility is questionable."

Analysis and Conclusion

- [54] Because counsel for the Respondent has correctly identified the relevant portions of the evidence as it related to Windmill Farm. It is now for the court to analyse these in turn.
- [55] At paragraph 12 of her Affidavit in Support with respect to the said business the Petitioner deposes that it was "established jointly by the Respondent and I." At paragraph 8 of his Affidavit in Support of Summons for Determination of Property Interest, the Respondent deposes as to how the business was established in 1999 and the source of the financing¹⁶, the entrustment of the business to the Petitioner to manage and the Petitioner's failure to account for the income derived from the business.
- {56] At paragraph 31 of the Respondent's Affidavit in Defence filed on 23rd March 2012, the Respondent deposes as to what he did in relation to a storage tank for Windmill Farm in terms of an estimate. At paragraph 34 of the Respondent's said Affidavit in Defence, filed on 23rd March 2012, the Respondent further deposes as to his contribution to items purchased for the new business. He deposes also that he "greatly assisted the Petitioner in purchasing equipment for Windmill Farm and to a considerable extent assisted in operating the business."
- [57] At paragraph 31 of the Petitioner's Affidavit in Reply, filed on 21st June 2012, the Petitioner admits paragraph 31 of the Respondent's Affidavit aforesaid. At paragraph 35 of the Petitioner's Affidavit in Reply, filed on 21st June 2012 the Petitioner admits paragraph 34 of the Respondent's Affidavit in Defence, filed on 23rd March 2012, except as regards the business making a profit and the purchase of a Toyota Dyna truck, bus and generator by EAL for the new business. This is what the Respondent deposed at paragraph 34 aforesaid.

¹⁶Being financed by earnings from the operation of equipment and assets derived from the dissolution of S & B Tweed

"34 Funds were taken from Equipment Association to purchase for the Windmill Farm business the following items: generator, storage containers, two Toyota buses, one Toyota truck, all water coolers, water processing equipment, blow mould equipment, gen set, and air compressor and other items. I greatly assisted the Petitioner in purchasing equipment for Windmill Farm and to a considerable extent assisted in operating the business. Up until the year 2007 Windmill Farm business made a profit of \$37,626.00"

Conclusion

[58] Despite certain demands regarding items purchased by the Respondent the court accepts and finds as a fact that the parties intended the Windmill Farm to be jointly owned. This is evident from the involvement of the Respondent in the construction of the plant and the purchase of the equipment to be housed in the said building for the business of purifying water.

[59] At the same time the court finds as a fact that although the Respondents assisted in the operation of the business it was the Petitioner who did so substantially.

[60] It is clear that both parties worked on the setting up of the plant based on a common intention. It is therefore the determination of the Court that the Petitioner and the Respondent own the business known as Windmill Farm is owned equally by them and correspondingly are also entitled to share equally in the profit made by the said business. The question of sole ownership does not arise from the evidence.

Insta Tyre World

[61] With respect to this business the Petitioner contends that it is owned equally her and the Respondent. On the other hand the Respondent is seeking a declaration that the said business is owned by him solely and seeks an order to this effect.

[62] It is common ground that Insta Tyre World was established in 2002 and Windmill Farm was set up in 1999. Further, it is also common ground that the two businesses are some seven miles apart.

[63] The Petitioner rests her claim on the assertion that she managed the business. On the other hand, the Respondent in his Affidavit in Defence at paragraph 35 deposes as to the manner in which he financed the said business which was by a line of credit of US\$57,000.00 from Merityre Specialists Limited which is still ongoing with a present credit balance of \$16,762.57.

[64] At paragraph 35 of her Affidavit in Reply, filed 21st June 2012 the Petitioner deposes as follows in the matter:

"I admit to Paragraph 35 of the Respondent's Affidavit in so far as it is stated that Insta Tyre World was a sole trader. I make no admission or denial with reference to the present indebtedness of Insta Tyre World. The Petitioner asserts that before the Respondent locked out the Petitioner out of the Insta Tyre premises Insta Tyre World was not indebted to Merrityre anyway due to the fact that my Scotia Gold Credit Card was used to pay fifty percent prior to shipment and the remaining fifty percent upon arrival. I was not reimbursed for the use of the credit card facility. A copy of my Scotia Gold Master Card is exhibited hereto and marked "FMT2 evidencing the fact that my credit facility remains unpaid."

[65] The difficulty the Court has is that Exhibit FMT2 shown transactions between 26/01/12 and 23/02/12: two are for payments, one a cash advance, another for payment to Auto Pay/Dish Network and one for the over-limit fee. There is no mention of a payment to Merityre Specialists. And even if the credit card is unpaid there is no evidence that it was because the Respondent caused it to be unpaid. These observations are also made by the Respondent in his Supplemental

Affidavit. And even with this attempt the Petitioner has failed to show any financial contribution to the business known as Insta Tyre World. It is important to re-state the fact that this business is seven miles from Windmill Farm.

[66] Having regard to the evidence the Court accepts the following submissions on behalf of the Respondent:

- “(i) The Respondent alone contributed to the start of the business.
- (ii) The Respondent alone appears as owner of the business on the “Maintain Individual Enterprise” document exhibit RST5.
- (iii) The Respondent incurred personal liability to Merityre in respect of the business.
- (iv) The Respondent was personally liable to Merityre for the goods delivered and despite the fact that he paid a substantial sum towards the purchase of the goods he is still indebted Merityre.
- (v) The Petitioner made no contribution to the start of the business.
- (vi) There was no arrangement or understanding reached between the Respondent and the Petitioner that the business of Insta Tyre World is to be shared beneficially.
- (vii) It is obvious that the Respondent was the sole owner of the business and the onus is upon the Petitioner to prove that the common intention was that she should be entitled to a beneficial interest in the business and that she has suffered detriment. It is respectfully submitted that she has not done so.”

Conclusion

[67] Based on the fact that the Petitioner has failed to establish a common intention with regard to the business, has not shown that she made any financial contribution to the start of the business, or otherwise, and has not shown she has suffered detriment, the Respondent is hereby declared to be the sole owner of the business Insta Tyre World.

- [68] **Lands that situate at Green Hill, Canada Estate, Taylor's Range, Humming Bird Development and Pleasant Ville.**

Green Hill

- [69] In submissions on behalf of the Petitioner it is contended that the 17.41 acres was acquired in lieu of payment of work done by Equipment Association Limited of which Mrs. Tweed is a 50% shareholder. The submission goes on to say that the land should be divided 50% to each party.
- [70] The Court has two difficulties. The first is that the legal position as to ownership is not stated and the second is that the Respondent in his Affidavit of 23rd March does not mention it at paragraph 50 (1) – (v) (2). Nor does learned counsel for the Respondent mention it in his submissions.

- [71] Therefore the Court will not make any order in this regard.

Leasehold property at Canada Estate

- [72] Learned Counsel for the Petitioner concedes that is unable to provide a value for the remainder of the 99 year lease. It is however submitted that it should be divided 50% each side.
- [73] Again, the difficulty is as with the Green Hill land and no determination will be made.

Land situate at Taylor's Range

- [74] A value of \$580,000.00 is stated by Learned Counsel for the Petitioner as the value and submits there should be an equal decision.
- [75] Again, the difficulty is as before plus the Respondent deposes that the property is still vested in the original owner. No order is made in this connection.

Humming Bird Development and Pleasant Ville Drive

- [76] By a Private Parties Mediation Agreement of 23rd February 2012 it was agreed as follows:

1. Lot 19 Humming Bird Development in the Parish of Saint George in the Island of Saint Christopher, which is recorded by way of a Certificate of Title dated 1st August 1999 and recorded in Register Book O2 at Folio 184 be registered in the name of Cylance Tweed.
- 2 Lot No. 21 Pleasant Ville Development be registered in the name of Sylvannie Tweed.

[77] Therefore no order is required in this circumstance.

The Funds (Petitioner)

[78] There are claims for funds on both sides. In so far as the Petitioner is concerned the claims are as follows:-

- (i) The sum of \$27,500 being the monies which the Respondent removed from a bank account at the Bank of Nova Scotia which belonged to her alone.
- (ii) The sum of \$60 000 being half of the money which the Respondent appropriated from a fixed deposit held at the Bank of Nova Scotia.
- (iii) The sum of \$20 000 is being half of the money which the Respondent received from the sale of a container of copper.

[79] **Removal of \$27,500 from the bank account by Respondent.**

[80] This sum identified at paragraph 7 of the Summons for Determination of Property Interest and elaborated upon in the Affidavit in Support. The contention is that the money belonged solely to her which was received from the sale of flowers, vegetables and fruits.

[81] The Respondent in his Affidavit in Support for Determination of the Property Interest deposes that the joint account in question was opened at Scotia Bank to pay a Scotia Gold Credit Facility of approximately \$51 000.00 incurred in relation

to Windmill Farm in the purchase of equipment and also to service the mortgage on the property at 10 Mattingley Heights.

[82] In further elaboration on the issue the Petitioner deposes that she had a Term Deposit in favour of S. Tweed (exhibits FMT6 (a) and FMT6 (b)). And in response the Respondent deposes that the Term Deposit does not identify a bank, neither the Term Deposit or the cheque shows that \$27 500.00 was withdrawn from the Petitioners account at Scotia Bank; and the cheque is drawn on a National Bank account and deposited at the said National Bank.

[83] The Court therefore agrees with the Respondent that the amount of \$27,500.00 is not shown to have been removed or withdrawn from the account identified by the Petitioner. The order sought to have the Respondent repay \$27,500.00 to the Petitioner's is denied.

[84] **\$60,000.00 from a Scotia Bank fixed deposit.**

[85] In this regard the Petitioner is seeking to have the Respondent pay to her the sum of \$60,000.00 being half of the money which the Respondent appropriated from a fixed deposit at the Bank of Nova Scotia.

[86] The Petitioner deposes that both the fixed deposit of \$120,000.00 was held at Scotia Bank, being the profit from the business.

[87] The Respondent does not deny the actions alleged but contends that the Petitioner withdrew \$40,000.00 without his consent.

[88] The question then becomes: who is to be believed?

[89] Learned Counsel for the Respondent submits that the Respondent should be believed in view of the Petitioner's Affidavits which contain "several self

contradictions, inconsistencies and patent untruths.” The Court agrees. However, in all the circumstances, given the fact that the source of the deposit is not clearly identified on the evidence and the businesses operated would include Windmill Farm, which is owned equally by the parties, the Respondent is hereby ordered to repay the Petitioner \$20,000. This would be the remainder of her share of the fixed deposit.

Sale of Copper

[90] The Petitioner is seeking an order that the Respondent pay to her the sum of US\$20,000.00, being half of the monies which the Respondent received from the sale of a container of copper.

[91] At paragraph 34 of her Affidavit in Support the Petitioner deposes that on 24th September a 40 foot container of scrap copper wire was sold to Erett Wallace of the USA for the sum of US \$40,000.

[92] According to her, the scrap copper came from the business known as Equipment Association being operated by General Operating Agency Limited. The Petitioner deposes further that the Respondent has not accounted to her for the money so derived from the sale.

[93] Three cheques are exhibited as proof of the purchase of the scrap. According to the Respondent, in his Supplementary Affidavit, one cheque was signed for him “For Copper.” And two others were signed by the Petitioner without a purpose being stated.

Analysis and Conclusion

[94] The dates on the cheques and the date of sale may become significant and critical:

One cheque is dated “16/12/99.” It is for \$5,000.00 payable to Custom Coil and “copper” can be seen on the stub. The second cheque is dated

"18/12/00" payable to Custom Coil. It has no stub. It is for \$5,000.00 also. The third cheque is also payable to Custom Coil in the amount of \$8,000.00. It is dated "11 Dec 2002." And the word "copper" appears on the stub.

[95] The Respondent has conceded that the Petitioner wrote two of the cheques one, of which on the Court's findings, does say "copper."

[96] The date of the sale which is not disputed by the Respondent being 29th September 2004 and the dates of payments between 1999 and 2002, contrary to the submission by learned counsel for the Respondent it is reasonable to infer that the other payment of \$5,000.00 to Custom Coil was also for copper despite the Respondent's contention¹⁷ that products other than copper wire were purchased from Custom Coil.

[97] It is also a fact that it was a 40ft container to be filled with scrapped copper wire would explain the span of time of 1999 to 2004.

[98] In any event, the Respondent deposed that the money was spent on a cruise for the entire family but the Petitioner and their eldest daughter did not participate in same. This is accepted by the Petitioner who said that she was not aware of the purpose. In any event, this acknowledgement by implication gives credence to the manner in which the money was spent as contended by the Respondent. Therefore no order is made in this regard.

Funds (Respondent)

[99] The Respondent's Supplementary Affidavit, filed on 9th August 2012 seeks the following orders with respect to funds:

"(vi) That the Petitioner pay to me one half share of the sum of \$300,000.00 (ECC) with accrued interest which said sum the

¹⁷ Supplementary Affidavit of Respondent filed 9th August 2012 at para. 32

Petitioner removed from the fixed deposit account No. 84719 at Bank of Nova Scotia and has retained the same.

- (vii) That the Petitioner pay to me one half share of the sum of \$181,922.67 (ECC) with accrued interest which said sum the Petitioner removed from the fixed deposit account No. 84691 at the Bank of Nova Scotia and retained the same.
- (viii) That the Petitioner pay to me one half of the sum of \$67, 500.00 (US) with accrued interest which said sum the Petitioner removed from the fixed deposit account No. 84492 at Bank of Nova Scotia and retained the same.”

Submissions

[100] There are no submissions on behalf of the Petitioner with respect to the foregoing:
In the case of the Respondent, the following are the submissions by learned counsel:

- “(a) In support of his contention the Respondent at paragraph 38 of his supplementary Affidavit filed 9th August 2012 sets out lucidly and concisely the details concerning the sum of \$300,000.00 that himself and the Petitioner deposited on a joint fixed deposit account in the Bank of Nova Scotia and the fact that the **Petitioner withdrew the said monies and never gave him one cent. Paragraph 38 has never been challenged or denied by the Petitioner.**
- (b) At Paragraph 39 of the said Supplementary Affidavit the Respondent again sets out clearly and concisely the details concerning the joint fixed deposit in the sum of \$181,922.67 at Bank of Nova Scotia and the fact that the **Petitioner withdrew the said monies and never gave him any** of it. Paragraph 39 **has never been denied or contradicted by the Petitioner.**
- (c) At Paragraph 40 of his said Supplementary Affidavit the Respondent again sets out clearly and concisely the details

concerning the joint fixed deposit in the sum of \$67,500.00 US at Bank of Nova Scotia and the fact that the Petitioner withdrew the said monies and never gave him any of it. Paragraph **40 has never been denied or challenged by the Petitioner.**"

[101] Learned Counsel's submissions are based on a principle of pleadings that a failure to contest or challenge a pleading amounts to acceptance by the other side.

[102] The orders are therefore granted as prayed.

Costs

[103] Orders and declarations have been made in favour of both sides and the court considers that in the circumstances the justice of the situation demands that there be no order as to costs.

ORDER

[104] **IT IS HEREBY ORDERED AND DECLARED** as follows:

1. The Respondent is entitled to be registered as sole, legal and beneficial owner of the property situate at Palmetto Point/Ottley's Yard as the Petitioner has failed to show a common intention and that she suffered and detriment in this regard.
2. The Petitioner and the Respondent are legal and beneficial owners of the property situated at Milliken Estate as no the evidence has been adduced to permit the Court to change the joint ownership.
3. The Respondent is the owner of the former company which was registered as Equipment Association Limited and its stock in trade since no common intention as between the Petitioner and the Respondent has been established by the Petitioner. Nor can such an intention be inferred. Further it has and been shown that the Respondent suffered any detriment.

4. The company Windmill Farm is owned equally by the Petitioner and the Respondent and the parties are to share equally in the profits of the said company as determined by a chartered accountant appointed by the court.
5. The Petitioner and the Respondent must each submit the names of two chartered accounts, numbered in order of preference, to this court within thirty (30) day of this date of this order.
6. The company Insta Tyre World is owned by the Respondent since the Petitioner has not shown a common intention regarding the setting up and operation of the said company and the Petitioner has not shown any detriment suffered by her in this regard.
7. No order is made with respect to the property situate at Green Hill and Canada Estate and there is an insufficiency of evidence before the Court regarding the properties.
8. The prayer to have the Respondent pay to the Petitioner the sum of \$27,500.00 is denied since it has not been shown to the Court that the said sum was withdrawn from the account identified by the Petitioner.
9. The prayer seeking to have the Respondent repay \$60,000.00 is denied but the Respondent must repay the Petitioner \$20,000.00 being the remainder of her share of the fixed deposit which money came from the profit of the business including Windmill Farm.
10. The prayer by the Petitioner that the Respondent should repay the Petitioner US \$20,000.00 is refused since the Respondent deposed that the money was spent on a cruise for the family which though the Petitioner did and partake thereof was not challenged.
11. The Petitioner must repay the Respondent half share of the sum of \$300,000.00 ECC which the Petitioner removed from fixed deposit No. 84719 at the Bank of Nova Scotia.

12. The Petitioner must repay one half share of the sum of \$181,922.00 ECC with accrued interest which sum was removed by the Petitioner from fixed deposit account No. 84691.
13. The Petitioner must repay the sum of repay half of the sum of \$67,500.00 US with accrued interest which said sum was removed from the fixed deposit No. 84492 at the Bank of Nova Scotia.
14. There is no order as to costs.

Appreciation

[105] This has been a long and complex case involving many issues and many attorneys-at-law. In the circumstance, the Court must record its deep and sincere appreciation to all the attorneys who have been involved for their contribution in terms of scholarship to a situation involving two parties with so much potential given their respective ages. In the end justice must prevail and the attorneys have contributed substantially in this regard.



Errol L Thomas
High Court Judge [Ag]