

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHCV 2009/0363

BETWEEN

SYLVIA COX

Claimant

AND

EUGENE JOSEPH

Defendant

Appearances:

Ms. Kathleen Bennett for the Claimant

Ms. E. Deniscia Thomas for the Defendant

2012: March 13
June 27

JUDGMENT

INTRODUCTION

[1] **REMY J.:** The Claimant and the Defendant lived together in a common law relationship for a period of upwards of sixteen (16) years and have a minor son. The relationship has now ended.

[2] In her Statement of Claim, the Claimant pleads the following:-

Prior to the time that the Defendant and herself met and began living together, the Defendant had already purchased the parcel of land described as: Registration Section:

Golden Grove; Block 612 1789B; Parcel 311 a portion of parcel 373 (the Land). The Defendant and herself agreed that they would build a family home jointly on the Land "for their mutual use and benefit". She invested in the construction of the family home through a series of loans obtained from the Teachers Credit Union. She purchased materials for the construction of the house and paid to prepare the plans for the house. She obtained funds to purchase the materials for the construction of the house from the sale of goods left to her by her father's estate.

[3] The Claimant states that she has, as a result, suffered loss and damage. She claims the following relief:-

1. A Declaration that the Claimant is the equitable owner of the building located on the property described as Registration Section Golden Grove Block 612 1789B Parcel 311 a portion of Parcel 373.
2. Interest.
3. Legal Practitioner's fixed costs on issue.
4. Process Service.
5. Such further or other relief as to the Court may seem just.

[4] In his Defence, the Defendant disputes the Claimant's claim. He denies that the Claimant is the equitable owner of the building, and counterclaims:-

1. A Declaration that the Defendant is the equitable owner of the house built on the farm or has an interest therein.
2. An Order that the Claimant vacate the Defendant's premises.
3. An accounting of the Defendant's monies held by the Claimant.
4. Legal Cost.
5. Cost.
6. Such further and other relief that the Court deems just.

[5] In her Reply, the Claimant denies that the Defendant is entitled to the relief counterclaimed, or to any relief.

ISSUES

[6] The issues that arise for determination by the Court are as follows:-

1. Whether the Claimant is the equitable owner of the building erected on the property described as Registration Section: Golden Grove, Block # 612 1789B, Parcel 311 a portion of Parcel 373
2. Whether the Defendant is entitled to his Counterclaim.

THE CLAIMANT'S EVIDENCE

[7] At the trial, the Claimant gave evidence on her own behalf and called one witness, namely Hudson Simon.

[8] In her Witness Statement, the Claimant states that she has worked and has been involved in agriculture in Bendals for over 12 years and that her father also operated the land in Bendals before he died in 1997. She states that the Defendant and herself lived together in a common law relationship for over 16 years. At no time during the course of the relationship with the Defendant was the Defendant ever the sole breadwinner of the family as she has always worked. When the Defendant and herself met and began living together, the Defendant had already purchased a parcel of land, namely Parcel 311. The Claimant states that initially, the Defendant and herself agreed to jointly build a family home upon the land, but that she ended up "making the most significant contributions towards the construction of the home". She applied for and obtained a series of loans from the Teacher's Credit Union, which were invested in the construction of the home. These loans were repaid solely by her. When her father died in 1997, he left her all his property and that she sold these items and invested the money from their sale in the construction of the house.

[9] The Claimant further states that she purchased the materials used in the construction of the home; that her brother transported the materials to the site of the home and that she paid for the preparation of the plans for the house. She also paid to have the land cleared and her family members assisted in the "actual construction" of the house. The Defendant became very ill in or around 1994 or 1995 and during that time, she used her

income from the farm to look after him. The Defendant was very ill for approximately one year and during his illness, she continued to work towards the completion of the home that she was constructing.

[10] The Claimant further states that the Defendant did not have 65 pigs on the farm and that there were never more than 20 pigs on the farm at any one time, all of which belonged to her. The Defendant never worked the farm with her father. Her father was working as a farmer and selling his produce, long before she met the Defendant. The vegetables and pigs on the farm which belonged to her father were all passed to her upon her father's death, and therefore that she did not need the Defendant's consent to sell them. The house which was built on the farm was also built from her own resources.

[11] Under cross-examination, the Claimant testified that construction of the house began around 1995 and that the materials for the building were purchased by her. She stated that she was self-employed in 1995. She was involved in farming since she was "small" and that all her family "raise up in farming" and "all of them continue with it, up to this day". The Defendant never assisted her father with the farm. The Claimant denied that the Defendant was the one who helped her father to plant as well as reap his produce for the market. She denied that herself and the Defendant stopped assisting her father because of his concern over money. She admits that her father died in 1997 and that herself and the Defendant took over the farm together. She states that she worked at the Holberton Hospital in the care project and started working there in 2002. She states that the house was completed in or about 2004 and not in 2002 and that herself, the Defendant and the children moved into the house in 2004; that when they moved in, there was still some interior work to be done in the house.

[12] The next witness to give evidence on behalf of the Claimant was Hudson Simon. His evidence as contained in his Witness Statement is that in or around July 2004 he gave the Claimant 5 pigs: - 3 sows and 2 boars. He stated that after this first occasion, he gave the Claimant more pigs but that he could not remember when exactly or how many.

- [13] A Witness Statement had been filed by the Claimant's brother Michael Joseph on behalf of the Claimant. Mr. Joseph did not appear in Court to give evidence at the trial. Consequently, his Witness Statement was struck off. A Witness Statement was also filed by Vincent Simon on the Claimant's behalf; he also failed to appear to give evidence at the trial and accordingly, his Witness Statement was also struck off.

THE DEFENDANT'S EVIDENCE

- [14] The Defendant gave evidence in his own behalf and called one witness, namely Ms. Viola Peterson.
- [15] In his Witness Statement, the Defendant states that the house which is the subject of the Claimant's claim (the dwelling house) is his house. He started building the house in or about 1995, right after Hurricane Luis. At that time, the Claimant and himself were living together in a house that he had been renting from his stepfather. The house took several years to build because he was building it "out of pocket". The house was completed in about 2002 – 2003. He was able to build the house with money that the Claimant saved for him and sometimes by handing over his pay envelope directly to the various workers. Everywhere he worked, he gave the money to the Claimant. She would save part and use the other part to deal with the household expenses.
- [16] The Defendant stated that they did not borrow any money from the credit union to build the house. After he "rammed the foundation for the house", he got sick and had to be hospitalized. The Claimant did not work while they were building the house; she had not worked for the time they had been living together until about 2003 or 2004 when she got a job at the hospital as a cleaner. The Defendant further states that the Claimant and he both assisted her father on the farm, and that after the death of the Claimant's father, they took over the farm. He did the clearing and hoeing, and the Claimant helped with the planting and reaping and sold the items in the neighbourhood. They did not make much money from farming and it was not until they started rearing pigs that things picked up.

- [17] The Defendant states that he did most of the construction on the house himself. He bent and tied the steel all by himself. A Mr. Harley from Cashew Hill helped him to line-out the foundation. Another guy helped him to lay the blocks in the foundation. He "rammed the foundation" himself and laid all the blocks with the assistance of friends. Most of the persons who worked on the house did so for less than they would normally charge because of their friendship with him. The Claimant and himself went together to make most of the purchases of the material; that both of their names were on the account at Midland Enterprises and at National Cement, but her name alone was on certain things. Further, that the Claimant would usually go to collect material for him since he would be working and so the receipts were in her name. After the house had been built the Claimant and himself got seriously into rearing pigs. They had about 67 head of pigs. He got very sick and had to be hospitalized. When he was discharged from the hospital, he could not keep on working the way that he had been working. He tried going to the farm, but the Claimant threatened to "fix him" if he did so. He states that he realized that the Claimant was involved with another man who worked with her on the farm and that the Claimant had built a structure on the farm where the man went to live.
- [18] Under cross-examination, the Defendant re-iterated that the dwelling house was built by him and not by the Claimant.
- [19] Ms. Viola Peterson gave evidence on behalf of the Defendant. In her Witness Statement, Ms. Peterson states that the Claimant and the Defendant are her neighbours. She states that when the dwelling house was being built, she used to supply water for the construction and that for the entire time that the house was being built, the Defendant personally worked on the house with one or two other persons assisting him. Under cross examination, Ms. Peterson testified that she was aware that the Claimant's father had a farm. She states that during conversations between the Claimant and herself, she understood that Eugene (the Defendant) would plant things like chives, thyme, sweet potatoes, and that the Claimant would go to the farm to reap what there was to be reaped.

SUBMISSIONS OF COUNSEL

[20] Counsel for the Claimant submits that the Defendant allowed the Claimant to build the dwelling house on land claimed by him, namely Parcel 311. She submits that he cannot now refuse to recognize her interest. She relies on the authority of *Inwards v Baker*. Counsel further submits that:-

- i). The Claimant is and had been a farmer before and during the time of construction of the house began in 1995.
- ii). The Defendant was not the sole breadwinner and that the Claimant did earn an income from farming.
- iii). At all material times the Claimant was earning an income that was sufficient to enable her to construct the house between 1995 and 2004.
- iv). At no time did the Defendant give the Claimant any money, either to save for him or to pay off her loans. The Claimant stated under cross-examination that she used her "hard earned money" to pay off the loans.
- v). It was the Claimant's income from farming that was used to look after the Defendant, and undoubtedly the rest of the family.
- vi). With respect to the Claimant's account at the Community First Co-operative Credit Union, that the funds contained therein belonged to the Claimant.

[21] Counsel for the Claimant further submits that, from the evidence before the Court, the Claimant expended her own monies to construct the house on Parcel 311 and thus is the equitable owner of the said building. She further submits that the Defendant is not entitled to a declaration that he is the equitable owner of the house on the farm nor has an interest therein. Further, that the Defendant is not entitled to the Order that the Claimant vacate the Defendant's premises, and is not entitled to "an accounting of the Defendant's monies held by the Claimant." Learned Counsel further submits that with respect to the latter Order, the Defendant has failed to comply with Part 41 of the Civil Procedure Rules 2000. Counsel submits that the Claimant should be granted the declaration which she seeks in her claim and that the Defendant's counterclaim should be dismissed with costs awarded to the Claimant on the Claim and Counterclaim.

[22] The rival submissions of Learned Counsel for the Defendant are as follows:-

- i). An equitable interest in land arises when an individual who is not the legal owner of property is able to show that he/she has made such contributions to the acquisition of the property or has acted to his/her detriment in reliance on an agreement (expressed or implied) with the legal owner that he/she would be given an interest in the property. The beneficial interest of the person making the claim generally arises by way of a resulting trust; a constructive trust; or proprietary estoppel.
- ii). In the instant case, the Claimant has not asked the Court to find that a trust of any kind was created in her favour or that circumstances giving rise to a proprietary estoppel existed. The Claimant has brought an ALL OR NOTHING claim by seeking a declaration from the Court that she is the equitable owner of the building. Counsel further submits that the Court therefore does not have any discretion to find that the Claimant is entitled to a share of anything less than 100%. The Claimant is either entitled to a declaration of the 100% ownership or no declaration at all.

[23] It is the further submission of Counsel for the Defendant that “the Claimant’s assertion that she was the sole beneficiary of her father’s possession is outrageous and untruthful.” With respect to the Claimant’s contention that she invested in the construction of the house through a series of loans obtained from the Teacher’s Credit Union, Counsel submits that, “regardless of the extent of the Claimant’s borrowing, if any of these monies were used for the purpose of constructing the building, it cannot be regarded as solely her contribution because the Defendant did the ‘lion share’ of the work and supported the family financially.

FINDINGS

[24] Having observed the demeanour of the witnesses at the trial, and having perused the evidence before the Court as well as noting the submissions of Counsel, the Court makes the following findings of fact:-

- a. The Court is of the view that the Claimant is not a truthful or credible witness. Where her evidence conflicts with that of the Defendant, the Court prefers and accepts the evidence of the Defendant.
- b. The Court does not accept the evidence of the Claimant that upon her father's death she inherited all his possessions. The Claimant's evidence is that her father had 16 children and that he left no Will. The Claimant's sister Monica Cox, was appointed Administratrix of the Estate of their father; there is no evidence before the Court from Monica Cox or from anyone else to substantiate the Claimant's claim that she was the sole beneficiary of her father's estate. There is no evidence before the Court that the other children relinquished their share in their father's property in favour of the Claimant. The Court therefore rejects the evidence of the Claimant that the dwelling house was constructed by her from funds acquired from the sale of items left to her by her father, as neither the facts nor the law substantiate the Claimant's evidence that she was solely entitled to those items. According to the Claimant, the items left to her by her father consisted of two cars, a pickup as well as various other items which she claims that she sold. The Claimant has produced a list of the items (the List) which she claims were left to her by her father. There is no evidence by way of receipt or otherwise to substantiate her claim that these items were sold and for how much. She also claims that her father left her his pension money from the Public Works and also monies at the Credit Union. She states that she used these monies to pay off loans.
- c. According to the Claimant, the various items left to her by her father totalled \$82,000.00. This amount plus the loans from the Credit Union is her contribution to the construction of the dwelling house.
- d. It is not disputed that the Defendant was diabetic and was hospitalized at some point in time. According to the Claimant's evidence, the Defendant became very sick in or around 1994 or 1995, and that during that time she used her income from the farm to look after him. The Court does not accept this evidence. The construction of the building commenced in 1995. This is not disputed by the

Claimant. The Court is of the view that the Claimant is not being truthful when she states that the Defendant became very ill in 1994 or 1995. The Court prefers and accepts instead the evidence of the Defendant that he became very sick and had to be hospitalized on two separate occasions, the latter occasion being sometime in 2004. The Court is of the further view that, prior to his hospitalization, the Defendant began the construction of the dwelling house, and bent the steel, laid out the foundation and, with the assistance of other workers, constructed the said dwelling house. The Defendant contributed in both money and labour towards the dwelling house.

- e. I do not believe the evidence of the Claimant that the Defendant never gave her any money and never purchased anything for the house. When it was put to the Claimant that the Defendant worked at least three jobs when the house was being constructed, the Claimant responded, "I don't know nothing about that." However, during further cross-examination, the Claimant reluctantly admitted that this was so. In spite of her admission, when it was put to the Claimant that the Defendant would give her the money which he made from these jobs to put together to save for the construction of the house, the Claimant responded "he never gave me no money." I do not believe the Claimant.
- f. It is not disputed that the Claimant and the Defendant took over the farm belonging to the Claimant's father together after the death of the Claimant's father in 1997. This evidence was not disputed by the Claimant.
- g. If, as the Claimant contends, she was "self employed" in 1995, and that during the period 1994/1995 when the Defendant allegedly became very sick, she used her income from the farm to begin construction of the dwelling house and to look after the Defendant, the question is, on whose farm was she deriving this income? In 1995, her father was still alive; herself and the Defendant had not yet taken over the farm. If she was working on her father's farm during that period 1995 to 1997, she was either assisting him voluntarily, or else was a paid worker for her father. She has given no evidence of any wages or income from

her father or from anyone else, such as would enable her to begin construction of the dwelling house in 1995, as she claims.

- h. It is also not disputed by the Claimant that while the Defendant and herself were working the farm together, the Defendant prepared the land and did the planting and hoeing and that the Claimant reaped the produce and sold them and collected the monies. The Claimant, however, would like the Court to believe that the proceeds of sale of the produce belonged to her, and that this money, "her money" alone, was used in the construction of the dwelling house.
- i. The Defendant's work on the farm enabled the Claimant to reap and sell the produce therefrom while the Defendant was hospitalized.
- j. The Court is also of the view that the Defendant assisted the Claimant's father on the farm while the latter was alive and does not accept the evidence of the Claimant to the contrary.
- k. With respect to the pigs on the farm, the Claimant's evidence is that the Defendant did not have 65 pigs on the farm; she states that there were never more than 20 pigs on the farm at any one time, all of which belonged to her. She states that the pigs on the farm which belonged to her father, like the vegetables, all passed to her upon her father's death. The Court is of the view that the Claimant is not being truthful with respect to this evidence. In the first place, as stated above, there is no evidence that the Claimant alone was the beneficiary of her father's estate. It is also worth noting that the Claimant made no mention of the pigs on the List which she submitted. She cannot therefore claim that all the pigs and vegetables on the farm passed to her on her father's death. Further, the Claimant's witness Mr. Hudson Simon gave evidence that he gave the Claimant 5 pigs in or around July 2004, he states that he gave the Claimant more pigs, but that he could not remember when exactly. Mr. Simon's evidence is that he gave the Claimant the additional pigs after the first occasion in July 2004, not before.

- l. The Court accepts the Defendant's evidence about the pigs on the farm in preference to that of the Claimant. In particular, the Court accepts the Defendant's evidence that after the house had been built, the Claimant and himself "got seriously into rearing pigs". He stated that they had about 67 head of pigs "mature as well as suckling." The Defendant, however, has produced no evidence to substantiate the amount of pigs that there actually were on the farm. Assuming without accepting the Claimant's evidence that there were never more than 20 pigs on the farm at any one time, the Court is of the view that the pigs could not all belong to the Claimant.
- m. The evidence before the Court is that the Claimant worked on the farm alongside the Defendant after her father's death, at which time they took over the farm. The Defendant accepts that the Claimant worked on the farm; his contention, however, is that the Claimant did not earn an income doing so.

ANALYSIS

ISSUE # 1 - IS THE CLAIMANT THE EQUITABLE OWNER OF THE BUILDING, THAT IS THE DWELLING HOUSE ERECTED ON PARCEL 311 BELONGING TO THE DEFENDANT?

- [25] It is undisputed that the Defendant is the legal owner of Parcel 311 (the land). The owner of the legal estate is also prima facie the owner of the whole beneficial interest.
- [26] In the instant case, the Claimant contends that she constructed a three bedroom concrete house (the dwelling house) on the Defendant's land, parcel 311, from her own resources, as well as a house on her farm (the farm house). The Claimant pleads that the Defendant had already purchased the land before they met. She also pleads that she invested in the construction of the dwelling house, - "the family home" – through a series of loans; that she purchased materials for the construction of the house, paid to prepare the plans for the house, and obtained funds to purchase the materials for the construction of the house from the sale of goods left to her by her father's estate. She

claims that, as a result, she is entitled to a declaration that she is the equitable owner of the dwelling house.

[27] Counsel for the Claimant submits that "the Defendant allowed the Claimant to build a house on land owned by him and thus, he cannot now refuse to recognize her interest." Counsel relies on the authority of *Inwards v Baker*, a decision of the English Court of Appeal, to ground her submission. That case is authority for the doctrine of proprietary estoppel.

[28] Counsel for the Defendant has correctly stated when an equitable interest in land arises. She states thus:-

"An equitable interest in land arises when an individual who is not the legal owner of land/building ("property") is able to show that he/she has made such contributions to the acquisition of the property or has acted to his/her detriment in reliance on an agreement (expressed or implied) with the legal owner that he/she would be given an interest in the property. The beneficial interest of the person making the claim generally arises by way of:

- a. Resulting Trusts – See: *Gissing v Gissing* (1971) AC 886.
- b. Constructive Trusts – See *Lloyds Bank v Rosset* (1990) 2 WLR 867; *Drake v Whipp* (1995) The Times 19 December
- c. Proprietary Estoppel – See *Inwards v Baker* [1965] 2 Q.B. 29."

[29] It is the further submission of Counsel for the Defendant that the Claimant has not asked the Court to find that a trust of any kind was created in her favour or that circumstances giving rise to a proprietary estoppel existed. It is true that a claim to a proprietary estoppel was never identified as such in the Claimant's Statement of Claim. However, as stated in *Re Vandervells Trusts*, a case mentioned in **FBO 2000 (Antigua) Limited and Vere Cornwall Bird JR. et al¹**:-

"It is sufficient for the pleader to state material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to, what he has stated. He can present, in argument, any legal consequence of which the facts permit."

¹ Civil Appeal No.30 of 2003

[30] Proprietary estoppel is a discretionary remedy. The law is settled that the essential elements that a claimant must prove to raise the equitable doctrine of proprietary estoppel are as follows:-

- a. Encouragement or acquiescence by the defendant
- b. Detrimental reliance by the claimant
- c. Unconscionability in withdrawing the promised benefit.

[31] In the instant case, with respect to the first essential, namely encouragement or acquiescence, the Court is of the view that there is no evidence before it that the Defendant encouraged the Claimant either expressly or impliedly to build a house on his land. The Court does not accept the submission of Counsel for the Claimant that the Defendant "allowed the Claimant to build the house on land owned by him." Nowhere in the Claimant's Witness Statement is there any evidence that the Defendant encouraged her either expressly or impliedly to build "her house" on his land. Most importantly and significantly is the fact that there was no case made in the Statement of Claim that the Claimant was encouraged, induced or led to believe that she could build "her house" on the Defendant's land, or that the dwelling house which was being built would be hers. The Court is of the further view that the Claimant's Statement of Claim itself contradicts the allegation of any encouragement or acquiescence by the Defendant. In paragraph 3 of the said Statement of Claim, the Claimant pleads that the parties agreed that they would build a family home jointly upon the said land for their mutual use and benefit. This, in the view of the Court is a significant concession by the Claimant that the dwelling house was to be constructed by both the Claimant and the Defendant and was not a situation where the Defendant sat back and allowed the Claimant to build "her" house on his land, or encouraged her either expressly or otherwise to do so. The Claimant has therefore failed to prove the first essential limb necessary to raise the equitable doctrine of proprietary estoppel.

[32] I now return to the case of *Inwards v Baker* on which Counsel for the Claimant relies. The facts of that case are as follows: - in 1931, the defendant was considering the building of a bungalow on land which he would have to purchase. His father, who owned

some land, suggested that the defendant should build the bungalow on his land and make it a little bigger. The defendant accepted that suggestion and built the bungalow himself, with some financial assistance from his father, part of which he had repaid. He had lived in the bungalow ever since. In 1951, the father died. The trustees of his will, who in fact visited the defendant at the bungalow, took no steps to get him out of the bungalow until 1963, when they claimed possession of it on the ground that, at the most, the defendant had a licence to be there which had been revoked. The Court held that: since the defendant had been induced by his father to build the bungalow on his father's land and had expended money for that purpose in the expectation of being allowed to remain there, equity would not allow the expectation so created to be defeated, and accordingly the defendant was entitled to remain in occupation of the bungalow as against the trustees.

[33] In the view of the Court, the case of *Inwards v Baker* does not assist the Claimant. In *Inwards v Baker*, there was a clear representation by the father that the son would be allowed to remain in the bungalow for as long as he wished. In the instant case, there was no such representation by the Defendant. If, as the Claimant contends, she made a significant expenditure on the Defendant's land to her detriment, she was not encouraged to do so by the Defendant. The question of unconscionability, therefore, does not arise.

[34] I therefore conclude that the facts of the instant case do not permit me to make a finding that the Claimant is entitled to a declaration that she is beneficially entitled to the dwelling house by virtue of a proprietary estoppel.

IS THE CLAIMANT ENTITLED TO ANY SHARE IN THE DWELLING HOUSE BY VIRTUE OF A TRUST?

[35] As stated above, it is the submission of Learned Counsel for the Defendant that "in the instant case, the Claimant has not asked the Court to find that a trust of any kind was created in her favour...."

[36] Counsel's submission is accurate. However, it is settled law that the Court will intervene to impose a trust "where it is just and equitable to do so."

[37] As to the meaning of "trust", Halsbury's Laws of England² states as follows:-

"Where a person has property or rights which he holds or is bound to exercise for or on behalf of another or others, or for the accomplishment of some particular purpose or particular purposes, he is said to hold the property or rights in trust for that other or those others, or for that purpose or those purposes, and he is called a trustee. A trust is a purely equitable obligation and is enforceable only in a court in which equity is administered."

[38] In the House of Lords decision of **Gissing v Gissing**³ Lord Diplock had this to say:-

"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 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."

[39] The doctrine of resulting, implied or constructive trusts is not limited to a husband and wife but applies even in the case of a man and his mistress.

[40] In the instant case, the onus is on the Claimant to prove that she is the equitable owner of the land as alleged. It is for the Claimant to prove the existence of a trust. In the absence of a valid express declaration of trust, the Court must apply the relevant principles which govern the law of trusts.

[41] In the House of Lords decision of **Lloyd's Bank PLC v Russell**⁴, Lord Bridge stated what the trust principles that should be applied are as follows:-

"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 was at

² Fourth Edition (2000 Reissue) vol. 48, page 343, para. 501

³ [1970] 2 ALL ER 780

⁴ [1990] 1 ALL ER 1111

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 between the partners, however imperfectly remembered and however impressive 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 proprietary estoppel."

[42] Even where there is no evidence to support a finding of an agreement or arrangement to share the beneficial interest, however reasonable it might have been for the parties to make such an agreement if they had applied their minds to the question, the Court may infer a common intention to share the property beneficially, from the conduct of the parties. If the inference can properly be drawn, the same conduct may be relied upon to show that the party has acted to his or her detriment or has significantly altered his or her position in reliance on the inferred agreement. Direct contributions to the purchase price by a party who is not the legal owner, whether initially or by payment of mortgage instalments, would readily justify the court in drawing the inference of a common intention, although it has been said to be very doubtful whether anything less would do. - see Halsbury, page 429, paragraph 617.

[43] In **Grant v Edwards et al**⁵, Sir Nicholas Browne Wilkinson VC addressed the issue of the requirement of a common intention between the parties in this way:-

"In most of these cases the fundamental, and invariably the most difficult question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties and almost always from the expenditure incurred by them respectively."

[44] The Claimant in her Statement of Claim contends that the Defendant and herself agreed that they would build a family home jointly on the said lands for their mutual use and benefit. The Defendant in his Defence and Counterclaim categorically denies that this is so. He pleads that "the only intention of the Defendant was to build a house in which he could happily reside with family and children and be visited by those of his family and

⁵[1986] CH 638

children who did not reside with him." According to the Defendant, there was no intention on his part that the dwelling house was to be jointly owned by himself and the Claimant.

[45] The Defendant in paragraph 5 of his Witness Statement states as follows:-

"The idea for building the house came out of a discussion that the Claimant had with me that I should look about buying a piece of land from the Government or privately. I told her that I did not want any land. After that she became upset. She was arguing whether I was satisfied with living in my stepfather's house and where I would put my other kids when they come to Antigua to look for me."

[46] The Defendant continues in paragraph 6 of his Witness Statement thus:-

"I did not take her (the Claimant) on at first because I intended to take my time and build my house whenever I was ready. Also, I already owned a piece of land, but I didn't tell her. She found out about the land afterwards. At that point, she started saying that she could save money for me so I could get a roof over my head and have a proper place where I could invite my children. I gave in and did as she suggested."

[47] According to the witness Viola Peterson, she is the one who told the Claimant that "the land next to her was owned by Eugene (the Defendant".) This evidence was not contradicted by the Claimant.

[48] There is no evidence before the Court of any express discussions between the Claimant and the Defendant to support a finding of an agreement whether express or implied that they would share the dwelling house. Although the Claimant has pleaded that the Defendant and herself agreed to build the dwelling house jointly for their mutual use and benefit, this is not borne out by her evidence. There is no evidence that such an intention was communicated by the Defendant to the Claimant. However, a common intention can be inferred from the whole course of dealing between the parties as well as their conduct in relation to the property. The Court, however, finds no evidence from which such an intention can be inferred. The Court is of the view that it was never the intention of the Defendant that the Claimant should share in the house which he was going to build. He did not even tell her that he already owned the Land. The Court is of the view that the Defendant's evidence that the Claimant offered to save money for him so that he could build the dwelling house is more credible than the Claimant's

version that there was an agreement between them that they would build the house jointly for their mutual use and benefit. The Court is of the view that the Defendant never intended the Claimant to share in the dwelling house, let alone to be entitled to the entire beneficial interest therein.

[49] I find from the evidence that the intention of the Defendant was to build the dwelling house for himself. I also find that, notwithstanding that she has pleaded that the Defendant and herself agreed that they would build a family home jointly on the lands for their mutual use and benefit, that the Claimant's evidence discloses an intention to acquire sole ownership of the dwelling house. Her evidence is that "she" alone purchased the materials for building the dwelling house; that she alone paid off the loans; that she alone looked after the household when the Defendant was ill; that she alone was entitled to the proceeds of the sale of the farm produce.

[50] The law is settled that the Court cannot impute a common intention on the part of the parties where none exists. Considering all the evidence, I am unable to find even a single thread from which a common intention on the part of the Claimant and the Defendant to jointly build a family home can be woven.

[51] I also do not believe that the Claimant acted to her detriment. As stated previously, I do not believe the Claimant's evidence that she incurred the substantial expenditure as alleged in the construction of the dwelling house. I reject in its entirety her evidence that she used the proceeds of sale from her father's estate in the construction of the dwelling house. I do not believe that she made a significant contribution to the construction of the dwelling house, let alone that she made a more significant contribution than the Defendant. I do not believe her evidence that the Defendant made no contribution to the construction of the dwelling house. There is no cogent evidence that she incurred a substantial expenditure referable to the dwelling house.

[52] Accordingly, I find no basis on which to make a declaration that the Claimant is the equitable owner of the dwelling house on the basis of a constructive trust. I agree with the submission of Counsel for the Defendant that the Claimant has not made a claim for anything other than a declaration that she is the equitable owner of the dwelling house.

ISSUE NO. 2 - IS THE DEFENDANT ENTITLED TO HIS COUNTERCLAIM?

[53] The Defendant has pleaded that in or around 2005, he had to be hospitalized on account of his diabetes. He states that at that time, he had approximately 65 pigs of various sizes on the farm. He states that during the course of his recovery, the Claimant brought "one Douglas" to assist around the yard and on the farm. The Defendant states that the Claimant began an intimate relationship with Douglas; a relationship which persists to date. Further, the Claimant sold the pigs on the farm and the food planted therein without the knowledge or consent of the Defendant and has constructed a house within the farm (the farm house) in which Douglas resides.

[54] The Defendant alleges that as a result of the aforesaid matters, he has suffered loss and damage. He counterclaims:-

- 1) A Declaration that the Defendant is the equitable owner of the house built on the farm or has an interest therein.
- 2) An Order that the Claimant vacate the Defendant's premises.
- 3) An accounting of the Defendant's monies held by the Claimant.

[55] In her Rely, the Claimant denies that the Defendant is entitled to the relief counterclaimed.

Is the Defendant the equitable owner of the farm house? Alternatively, does the Defendant have an interest in the said farm house?

[56] The Defendant in his Witness Statement states, "...Just after I got out of the hospital, I realized that the Claimant was involved with someone who worked with her. That man was working on the farm with her and she had built a structure on the farm where the man went to live." It would appear that the farm house was built while the Defendant was hospitalized; further that the said farm house was built without the Defendant's knowledge.

[57] The Claimant has not denied her relationship with Douglas. With respect to the construction of the farm house, the Claimant states in her Witness Statement: "...the house which was built on the farm was also built from my own resources."

[58] He who alleges must prove. The Defendant bears the onus of proving that he is the equitable owner of the farm house, or alternatively, that he has an interest therein. As this is a civil case, the standard of proof is on a balance of probabilities. In the view of the Court, the Defendant has not discharged this burden. He has produced no evidence of his ownership of the farm house. Further, the Court is of the view that the Defendant made a significant concession when he stated that "I realized that the Claimant was involved with someone who worked with her... she (the Claimant) had built a structure on the farm where the man went to live." The Defendant has produced no evidence that the farm house was built with his resources or that he contributed either directly in money or money's worth, or else indirectly, to the construction of the farm house. Accordingly, the Court finds that the Defendant is not entitled to a declaration that he is the equitable owner of the farm house; neither is he entitled to an interest therein.

Is the Defendant entitled to an accounting of the monies held by the Claimant?

[59] In his Defence, the Defendant pleads that the Claimant maintained a joint account with her father at the Credit Union, but that, in or around the same time that the Defendant decided to construct the dwelling house, the Claimant's father demanded that the Claimant withdraw all the funds from the account and deliver the same to him. The Defendant pleads that he gave the Claimant money to put on the account at the Credit Union to prevent it from closing and thereafter, that he regularly gave the Claimant money to save on the account. The Defendant states that, until the proceedings (i.e. the court proceedings) commenced, he was of the belief that the Claimant had added his name to the account. He contends that the money in the Credit Union Account belongs to him. He claims an accounting of these monies. Under cross-examination by Counsel for the Claimant, the Defendant was unable to provide any details of the bank account which he claims belongs to him. The Court is of the view that the Defendant has failed to discharge the burden of proving, on a balance of probabilities, that the

monies in the Credit Union Account belonged to him. He is therefore not entitled to an accounting of the said monies.

[60] The Defendant states that prior to his becoming very sick and being hospitalized, there were "about 67 head of pigs, mature as well as suckling." In his Witness Statement, the Defendant states that, "I am told that she (the Claimant) sold all the pigs, but I have not been given an account of the money made from them. All together, they would have been worth more than \$20,000.00 if sold per head and much more if sold as meat." The Defendant also claims an accounting of these monies.

[61] As stated in paragraph 24 above, the Defendant has produced no evidence as to the exact number of pigs that were on the farm. He had produced no evidence to substantiate his claim, on a balance of probabilities, that the Claimant sold "67 head of pigs, mature as well as suckling", for an amount in the region of \$20,000.00. Accordingly, the Court is of the view that the Defendant is not entitled to an accounting of these monies.

Is the Defendant entitled to an Order that the Claimant vacate the Defendant's premises?

[62] Counsel for the Claimant in her closing Submissions states that the farm house is the subject of the Defendant's counterclaim as well as the dwelling house. She submits that the Defendant is not entitled to an Order that the Claimant vacate either farm house or the dwelling house. It is apparent, however, the "premises" referred to in item (2) of the Counterclaim (paragraph 54 above) refers to the dwelling house. The Defendant is seeking an Order that the Claimant vacate the dwelling house. In paragraph 20 of his Witness Statement, the Defendant states, "I am asking the Court to order the Claimant to leave my house. She has gotten more than enough out of me. She has a relationship going on with someone else while living in my house.....I cannot enjoy the peace of my home with the Claimant present and I really just want the court to make a decision one way or the other so that she can go and leave me alone in my house."

[63] Counsel for the Claimant further submits that the Defendant is not entitled to the Order that the Claimant vacate the dwelling house, "particularly that the said house was built from the Claimant's resources." Based on my above findings, I cannot endorse Counsel's submission. The Defendant is entitled to an Order that the Claimant vacate the dwelling house, and I so order. Given the status of the relationship between the Claimant and the Defendant, the Court orders that the Claimant is to vacate the dwelling house forthwith, taking her clothing and personal belongings (excluding furniture and contents of the dwelling house) with her. In order to ensure that no breach of the peace takes place, the Court orders that Counsel for the parties arrange for the attendance and presence at the dwelling house of a law enforcement officer when the Claimant removes her clothing and personal belongings.

[64] The Court makes a further order that, within 7 days of vacating the dwelling house, the Claimant, through her Attorney shall provide the Defendant's Attorney with a list of the contents of the dwelling house (not including her clothing and personal belongings stated above) which she claims belong to her (the List). Failure by the Claimant to provide the List as directed will entitle the Defendant to assume ownership of all the contents. The Attorney for the Defendant will, within 7 days thereafter, either approve the List or else submit an amended list to the Claimant's Attorney for approval. The Claimant's Attorney will then arrange with the Defendant's Attorney as to the date and time suitable for the Claimant, at her expense, to remove her contents from the dwelling house. The Court urges Counsel for both parties to assist in ensuring a speedy, peaceful, and harmonious settlement of this matter. Counsel for the parties are at liberty to apply to the Court for further directions in the event that the parties are unable to agree on the contents of the List.

CONCLUSION

[65] From the evidence before the Court, and the submissions of Counsel, the Court is of the view that the Claimant is not entitled to a declaration that she is the equitable owner of the dwelling house. She cannot claim either under the principle of proprietary estoppel or under the principle of a constructive trust.

[66] The Court orders that the Claimant vacate the said dwelling house forthwith, subject to the conditions specified in paragraphs 63 and 64 above.

[67] With respect to the Counterclaim, the Court is of the view that the Defendant has not proved, on a balance of probabilities, that he is entitled to a declaration that he is the equitable owner of the farm house nor he is entitled to an interest therein, or that he is entitled to an accounting of the monies held in the account of the Claimant at the Credit Union. The Defendant's counterclaim with respect to those items is therefore dismissed. The Court finds, however, that the Defendant has satisfied the Court that he is entitled to an Order that the Claimant vacate the dwelling house. That part of his Counterclaim is proved on a balance of probabilities.

ORDER

- i). The Claimant's claim is dismissed.
- ii). The Claimant is to pay to the Defendant prescribed costs in accordance with CPR.
- iii). The Defendant is granted judgment on item (2) of his Counterclaim, namely the Order that the Claimant vacate the dwelling house is granted. The Claimant is to vacate the dwelling house forthwith.
- iv). Items (1) and (3) of the Defendant's counterclaim are dismissed.
- v). The Defendant is to pay the Claimant prescribed costs in accordance with CPR.


JENNIFER A. REMY
High Court Judge