

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

CLAIM NO: ANUHCV 2010/0099

BETWEEN:

WINGROVE JARVIS

Claimant

and

MARY JARVIS

Defendant

Appearances:

Ms. Shahida Ali-Schneider for the Claimant
Ms. Kerry-Ann Knowles for the Defendant

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2010: October 4
December 15
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JUDGMENT

- [1] **MICHEL, J.:** By Fixed Date Claim Form with Statement of Claim filed on 11th February 2010 the Claimant, Wingrove Jarvis, claimed against the Defendant, Mary Jarvis, possession of premises (consisting of a parcel of land at Lightfoot in St. John's together with the dwelling house erected on it) owned by the Claimant and wrongfully occupied by the Defendant, damages for trespass, interest, costs and further or other relief.

- [2] The Defendant filed a Defence & Counterclaim on 10th March 2010 in answer to the Claimant's claim. In her Defence, the Defendant denied that she was a trespasser and claimed that she had a 50% beneficial interest in the aforesaid premises. In her Counterclaim, the Defendant repeated the contents of her Defence and further averred that she had an interest, along with the Claimant, in other properties acquired by the Claimant in the course of their relationship, including a parcel of land at Golden Grove in St. John's and a business known and operated as "Jarvis Trucking and Backhoe Services," and she counterclaimed for declarations, an injunction, costs, interest and further or other relief against the Claimant.
- [3] By Reply and Defence to Counterclaim filed on 23rd March 2010 the Claimant joined issue with the Defendant on her Defence & Counterclaim.
- [4] The trial of the case took place on 4th October 2010, with the Claimant giving evidence on his own behalf and calling one other witness and the Defendant giving evidence on her own behalf and calling two other witnesses.
- [5] This case was filed by the Claimant against his former wife for possession of a dwelling house and damages for trespass arising from her residence in the house after the dissolution of the marriage, plus interest and costs. The Defendant in turn counterclaimed for a declaration of a 50% beneficial interest in the house and a beneficial interest in other properties owned by the Claimant, plus interest and costs.
- [6] The facts of the case are that the Claimant and the Defendant had an intimate relationship with each other since about 1986 or 1987; (according to the Defendant) they commenced living together in a common law union in a dwelling house owned by her since about 1988; they became formally engaged to marry around May 1995 and got married in September 1996; (according to the Claimant) they then separated seven months later (in April 1997) although they thereafter parented four children, three of whom are still alive; they were divorced in 2009 but (according to the Defendant) they both still live in the same dwelling house which gave rise to this case, along with the three surviving children of the marriage.

- [7] The property over which this case was filed comprises a portion of land purchased in the name of the Claimant only between 1995 and 1996, with the formal registration of the land in the name of the Claimant taking place in February 1996. A dwelling house was then constructed on the portion of land between 2003 and 2006, with the Defendant and the three children of the marriage moving into the house upon its completion, along with the Claimant (according to the Defendant). The Claimant claims to be solely entitled to the house and land, but the Defendant claims a 50% beneficial interest in the property.
- [8] To this factual background must be added the fact that there is another portion of land purchased in the sole name of the Claimant in 1994 and a business operated by the Claimant, which the Defendant alleges that she also has a beneficial interest in and she seeks declarations of her interest in these as well as in the earlier-referred-to house and land.
- [9] I propose to deal first with the business operated by the Claimant and with the property purchased in the name of the Claimant in 1994, which were not part of the Claimant's case but were brought into focus in the Defendant's Counterclaim.
- [10] In her Counterclaim (at paragraph 14) the Defendant averred that throughout the relationship between the Claimant and herself, the Claimant established and operated a business known and operated as "Jarvis Trucking and Backhoe Services," which business was established in or about 1988 and was registered in 1996, and that at all material times she made contributions towards the said business. In her Witness Statement however (at paragraph 27) the Defendant alleged that after the family relocated to Lightfoot - which according to her Witness Statement was in 2006 - the Claimant decided to take steps to start his own business, "Jarvis Backhoe and Trucking Services," and she agreed to assist him, and in or about 2006 she sold her Nissan Bluebird for \$3,500, which money she gave to the Claimant to assist with the business, and in February 2007 she loaned the Claimant \$5,000, also to use for the business, but which loan was repaid to her in April 2009. Then under cross examination, the Defendant said that she did not put any money in the

trucking business and that the Claimant did not agree that she would be any partner in his business.

- [11] The Defendant's contradictory statements in relation to her contribution to and entitlement to an interest in a business operated by the Claimant, culminating in her admission under cross examination that she did not put any money into the business and that it was never agreed that she would be a partner in the business, are sufficient to render her claim to a share in the Claimant's aforesaid business unsustainable, without even getting into the Claimant's own evidence in denial of the Defendant's claim. The Defendant's claim with respect to a beneficial interest in the Claimant's business is accordingly dismissed.
- [12] In her Counterclaim (at paragraph 13) the Defendant averred that during the common law union and the marriage between the Claimant and herself, the Claimant acquired other properties vested in his name only, including a parcel of land at Golden Grove, which acquisition resulted from her indirect contribution and assistance and not as a result of the Claimant's exclusive efforts, and so she seeks a declaration that she is entitled to an equal share in the land. Her evidence in support of this claim (at paragraphs 4 and 5 of her Witness Statement) was that in or about May 1995 she and the Claimant became engaged and as a result intensified their efforts in making future plans for the development of themselves and their prospective family, in pursuit of which they viewed lands in Herberts and Golden Grove which they decided to purchase, and that the latter is now solely owned by the Claimant. She gave no evidence of any contribution made by her towards the acquisition of or payment for the land, except to say that the land was originally allocated to her by the Central Housing and Planning Authority, but due to her financial obligations to her personal property she and the Claimant agreed that the Claimant would replace her as the purchaser and that she (the Defendant) was of the view that the land would have been held by the Claimant for their joint benefit in pursuance of their common objectives.
- [13] This evidence by the Defendant, if it proves anything, could only prove that it was not intended for the Defendant to have any share in the property, because if a portion of land was allocated to her and she could not have afforded to purchase it as a result of other

commitments, then it would have made perfect sense for her common law husband to have joined her in the purchase, rather than to replace her as the purchaser, if there was any intention for her to have any future interest in the property. The substitution of the Defendant by the Claimant as the purchaser would, in these circumstances, negative any notion of intended co ownership of the property. On the claim of a beneficial interest in the Golden Grove land, therefore, as with the claim of a beneficial interest in the Claimant's business, the Defendant's claim is dismissed on her own evidence.

[14] I come now to deal with the claim with respect to the house and land at Lightfoot, which led to the filing of this case in the first place.

[15] The parcel of land at Lightfoot is in the name of the Claimant only and the mortgage on the property to part finance the construction of the house is also in the name of the Claimant only. The Claimant asserts that the house and land are exclusively his property, having been purchased and paid for solely by him and for his benefit. The Defendant on the other hand claims a beneficial interest of 50% in the aforesaid house and land.

[16] The Defendant alleges that the land was purchased at a time when the parties were engaged to be married and were making plans for the development of themselves and their prospective family, which plans included the purchase of land to build their matrimonial home. She alleges that the land was purchased using a deposit returned to the Claimant and herself from an aborted purchase of other land by them and using their joint accumulated savings. She alleges that although the land was transferred into the name of the Claimant only, she was assured at all material times by the Claimant and understood that she held a 50% share in the land. She alleges also that during this time, and in fact from 1988 until 2006, the Claimant lived at her (the Defendant's) house in Golden Grove and made no financial contribution to the home, as a result of which he was able to save significantly. She alleges that she and the Claimant worked together to construct the house at Lightfoot, which she refers to as the matrimonial home, and they managed to build from foundation to ring beam without any loan, but in 2005 the Claimant, with her knowledge and consent, obtained a loan to complete their matrimonial home. She

alleges that she was not a direct party to the loan application because the Claimant persuaded her against it because he did not want her salary to be "tied up" in the loan, but she assisted in the procurement of the loan. She alleges that she also assisted in the construction of the matrimonial home by using materials purchased by her to repair her house at Golden Grove for the matrimonial home, paying transportation costs for materials, playing an integral part with respect to the daily operations in the construction of the matrimonial home and contributing to various costs associated with the completion of construction of the house. She alleged that when the matrimonial home was completed in 2006 she and the Claimant, together with their three children, moved from her house at Golden Grove into their newly-constructed home at Lightfoot and have been residing there ever since.

[17] Against this background, the Defendant claims a 50% beneficial interest in the house and land at Lightfoot.

[18] The Claimant on the other hand alleges that he purchased the land at Lightfoot in 1995 prior to his marriage and that at no time when he was purchasing the land did he intend for it to be shared between the Defendant and himself and he made no requests from the Defendant to contribute to its purchase or led her to believe that she would have an interest in the property. He alleges that in 2003 he began construction of his house on the land "with monies from [his] own pocket" and at no time did he request the Defendant to contribute or did she herself contribute. He alleges that he built the house up to the stage of ring beam and in 2005 he approached the St. John's Co-operative Credit Union for a loan to complete construction of the house. He alleges that he was granted a loan of \$285,857, which he has to repay in monthly instalments of \$3,052.40 for 240 months. He alleges that at no time did he ask the Defendant to join him in the loan or to assist in paying the mortgage. He alleges that the house was substantially completed in November 2006, with just a few finishing touches needed to be done and he begun to purchase one or two pieces of furniture for the house. He alleges that in or about November or December 2007 the Defendant approached him and asked that she be allowed to stay in the house because she wanted to repair her chattel house and he gave her permission,

whereupon she and their three children moved into the house shortly afterwards with her furniture. He alleges that the Defendant did effect repairs to her house but, to his surprise, he later learnt that she had put a tenant in her house and she had no intentions of moving from his house. He alleges that in April 2009 he commenced divorce proceedings and, after the divorce had taken effect and he was advised by his Solicitors that the Defendant's "right of occupation" had come to an end, he caused his Solicitors to write to the Defendant demanding that she leaves the property, but she has not left. The Claimant had alleged at paragraphs 3 to 5 of his Witness Statement that he and the Defendant had began living together as man and wife in the Defendant's house at Golden Grove upon the celebration of their marriage and lived together for seven months before he moved out and that he never resumed cohabitation with the Defendant.

[19] Against this background, the Claimant has brought this case against the Defendant seeking (inter alia) possession of the property.

[20] If the Claimant's evidence is to be believed, this Court would have to accept that the Claimant and the Defendant had an intimate relationship with each other from 1986 or 1987, the Defendant acquired her own house in which she lived alone from 1988, while the Claimant lived with his parents, and it was only after the Claimant and the Defendant got married in 1996 that the Claimant moved in with the Defendant, and then left after seven months and returned to live with his parents. The Court would have to accept too that the parties remained married until 2009 and had a total of six children in the course of their relationship, three of whom are alive and were born between 1998 and 2005, during all of which time the Claimant lived with his parents while the Defendant lived either alone or with the children of the Claimant and the Defendant. Yet the Claimant stated at paragraphs 13 to 15 of his Witness Statement that after the Defendant moved into the house at Lightfoot, shortly after November or December 2007, she and the Claimant "became more estranged and she would erupt into violent arguments and would hurl abuses at [him]." He further stated that "eventually, when it became patently obvious that we could not continue to cohabit ... I commenced divorce proceedings in April 2009." It is to be noted too that the Claimant stated under cross examination that in the divorce

proceedings instituted by him in 2009 he sought and got a divorce on the basis that the Defendant and himself had been separated from 2006.

[21] Without doubting that the Claimant may have maintained some sort of residence at the home of his parents throughout his over twenty-year common law and marital relationship with the Defendant, the Court accepts as more credible and more consistent with normal human behaviour, the evidence of the Defendant that the parties lived together, first in a common law relationship and then in a marital relationship, from 1988 until sometime between 2006 and 2009. This is corroborated (in part at least) by the evidence of Vere Christopher of the parties having lived together at the Defendant's house at Golden Grove from 1988 until they moved to the house at Lightfoot.

[22] On the basis of this determination, one arrives at the point of the Claimant having acquired the portion of land at Lightfoot while he lived with the Defendant in a common law relationship at her house in Golden Grove and built the house on the land while the two of them were legally married to each other and still living together at her house in Golden Grove.

[23] The next issue to be addressed is whether there was any agreement, arrangement or understanding between the parties that the land at Lightfoot was being purchased by the Claimant and/or that the house was being built on the land for the benefit of both the Claimant and the Defendant or whether, based on the conduct of the parties, the Court can infer a common intention to share the property beneficially between the parties.

[24] If the Defendant's evidence on this issue is to be believed, this Court would have to accept that the Defendant, who in 1996 would have been 28 years old, involved in an intimate relationship with the Claimant for 10 years, living in her own house (which she had herself purchased) for eight years, invested her money, including her accumulated savings, in the purchase of a portion of land on which she expected her future home to be built, but allowed the Claimant to buy the property in his name only. Unlike the case of **Abbott v**

Abbott¹, the Defendant in the present case did not require a non-citizen's licence to own property in Antigua; unlike the case of **Eves v Eves**², the Defendant in the present case had already attained the age of majority at the time when the land was being acquired; unlike the case of **Grant v Edwards**³, the Defendant in the present case was not in the throes of divorce proceedings with respect to a previous marriage; and unlike the case of **Hyett v Stanley**⁴, this was not a case of property already owned by one of the parties at the start of their relationship. In other words, this was not one of the situations present in several of the cases on this issue where there was some reason for property intended to be the joint property of the parties to be acquired in the name of one of the parties only; so there was no reason why the Defendant - if she was intended to be a co owner of the property at the outset - would not have had her name included in the deed of transfer of the property.

[25] This however is not the end of the matter. Although there may not have been an agreement, arrangement or understanding between the parties at the outset for the Defendant to be a co owner of the property, based on the conduct of the parties, the Court can infer a common intention to share the property beneficially between them.

[26] The Court is satisfied on a balance of probabilities that the Defendant (along the way) contributed financially and otherwise, directly and indirectly, to the acquisition and improvement of the portion of land at Lightfoot and the dwelling house constructed thereon in which the parties have resided from 2006 to the date of the case. In particular, the Court accepts that the Defendant housed the family, comprising the Claimant and herself and their children, from 1988 (or from their dates of birth in the case of the children) to 2006 and enabled the Claimant to accumulate and to use his resources in the construction of the house at Lightfoot, and sometimes contributed financially to various expenses related to the construction of the house and that she also furnished the house. The Court rejects the proposition put to the Defendant under cross examination that she was unable

¹ [2007] UKPC 53

² [1975] 3 All ER 768

³ [1986] 2 All ER 426

⁴ [2003] ESCA Civ. 942

to contribute to the construction of the house at Lightfoot because she had to use all of her resources on her house at Golden Grove. The uncontroverted evidence of the Defendant is that she purchased the house at Golden Grove in 1988 and extended it by adding a third bedroom in 1991. Apart therefore from the use of her resources to support the family while the Claimant accumulated and utilised his towards the construction of the house at Lightfoot, there is no evidence of her being financially handicapped between 1991 (when she completed the extension of her house) and 2006 (when she accepted a voluntary separation package from Government and stopped working).

[27] The question then becomes what is the extent of the Defendant's beneficial interest in the house and land at Lightfoot. There is no evidence that the Defendant is entitled to an equal share with the Claimant, who undoubtedly contributed the proverbial lion's share of the cost of the acquisition of the house and land, and the maxim that equality is equity cannot properly be applied to the facts of this case.

[28] The Court's determination on this issue is that the Claimant holds the legal estate in the property at Lightfoot on a constructive trust for the Defendant and himself, with the Defendant entitled to a one quarter-share of the beneficial interest and the Claimant to a three-quarters share.

[29] Having determined that the Defendant is entitled to a beneficial interest in the property, the Court accordingly declines to make the orders sought by the Claimant for possession of the premises, damages for trespass, interest and costs.

[30] As to the Defendant's counterclaims, the Court hereby grants a declaration that the Claimant holds the legal estate in the portion of land more particularly described as Registration Section: Central, Block No. 14 2190 B, Parcel No. 94 on a constructive trust for the Defendant and himself, with the Defendant having a one-quarter share of the beneficial interest and the Claimant a three-quarters share.

[31] The Court declines to make the other orders sought by the Defendant in her Counterclaim.

[32] Each of the parties to these proceedings shall bear his or her own costs.

[33] The following authorities were cited by Counsel and considered by the Court:

By Counsel for the Claimant –

1. **Hyett v Stanley and others**⁴
2. **Stack v Dowden**⁵
3. **Abbott v Abbott**¹

By Counsel for the Defendant –

1. **Gojkovic v Gojkovic**⁶
2. **Lloyds Bank plc v Rosset and another**⁷
3. **Burns v Burns**⁸
4. **Cornelius v Cornelius**⁹
5. **Stonich v Stonich**.¹⁰



Mario Michel
High Court Judge

⁵ [2007] UKHL 17

⁶ [1990] 2 All ER 84

⁷ [1990] 1 All ER 1111

⁸ [1984] 1 All ER 244

⁹ Antigua and Barbuda Civil Suit No. 673 of 2008

¹⁰ BVI Civil Appeal No. 17 of 2002