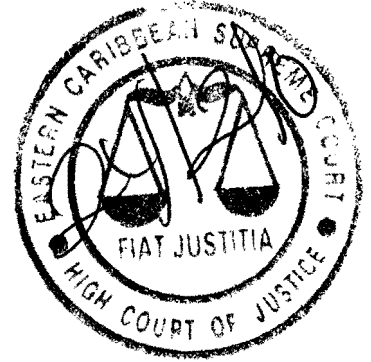


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 372 OF 2007



BETWEEN:

ANDRE DUFFIELD COTTLE

Claimant

v

MYRTLE LUCINDA WILLIAMS

Defendant

Appearances: Mr. S. John for the Claimant
Ms. N. Sylvester and Ms. P. Knights for the Defendant.

2009: July 8 & 13
2010: February 24

JUDGMENT

- [1] **THOM, J:** The Claimant and the Defendant were involved in an intimate relationship. During the period of that relationship a house and land situate at Rutland Vale ("the disputed property") was purchased from one Mark Punnett. The disputed property is registered in the names of the Claimant and the Defendant as tenants in common in equal shares. The purchase was financed mainly by a loan from the National Commercial Bank.
- [2] The relationship has ended and the Claimant instituted these proceedings in which he sought inter alia a declaration that subject to the terms of the Mortgage Deed dated the 4th day of May 2001, he is entitled solely to the equity of redemption in the disputed property.
- [3] The Claimant alleges in his statement of case that he gave instructions for the Defendant's name to be added to the title deed pursuant to a written arrangement made between them that she would occupy the disputed property until she had completed paying for her land

and had built her house there. Secondly, to give her some "legal backbone" in the event that the Claimant's wife from whom he was estranged should take legal action against her while she was in occupation. The Claimant further alleges that he alone made all of the mortgage payments and the Defendant lived in the house rent-free for a period in excess of three years.

[4] The Defendant in her defence alleges that the property was purchased in their joint names as it was their common intention that they would share equally in the property in their own rights and their agreement was never intended to be a temporary measure. Further, she contributed to the purchase price in that her employer waived the legal fees for the preparation of the Sale Agreement, the Trust Deed and the Vesting Deed. Also her employer prepared the Deed in such a way that the Claimant was not required to pay the 5% stamp duty which resulted in a saving of \$15,250. The Claimant also only had to pay one-half of the legal fees for the preparation of the mortgage deed because the Attorney waived the other half because of her employment with Attorney Mr. Errol Layne.

[5] The Claimant and the Defendant testified in support of their case. No witnesses were called by either party.

EVIDENCE

[6] The evidence of the Claimant is that in or about September 2000 following inquiries that he had made about purchasing property in St. Vincent, the Defendant informed him about a house for sale at Rutland Vale, Layou. The house was being constructed by Mr. Punnett. He held discussions with Mark Punnett and agreed to purchase the property. Since he was residing in the U.S.A. he needed someone to deal with the paperwork involved in the purchase. The Defendant volunteered to do so and he agreed since they were friends and she was working at a Solicitor's Office.

[7] He applied to the National Commercial Bank and he received a loan to facilitate the purchase of the disputed property. By Trust Deed dated April 30, 2001 No. 1389 of 2001

Mark Punnett held the property in trust for the Claimant and the Defendant as beneficiaries as tenants in common in equal shares. By a mortgage deed dated May 4, 2001 the disputed property was mortgaged to the National Commercial Bank to secure the principal sum of \$305,000, to be repaid in three hundred monthly installments of two thousand five hundred and sixty dollars each. He has paid all of the installments thus far. The purchase price of the disputed property was \$345,000. He paid the difference by providing materials for the house, such as paint, tiles, lighting fixtures and plumbing materials which he purchased in the U.S.A. He paid all of the transfer fees, the peril insurance premiums and the property taxes.

- [8] There was never a common intention or agreement that the Defendant should have any beneficial interest in the property. During the course of their relationship the Defendant indicated to him that she needed some help financially and he agreed to let her live in the disputed property for two years to save money so she could pay the loan for her land and build a house there. The Defendant also raised the issue that the Claimant's wife could seek to evict her from the house. In order to protect the Defendant from any such action by his wife, he agreed to have the Defendant's name included in the Deed of Conveyance. It was agreed that this was only a temporary measure.

UNDER CROSS-EXAMINATION

- [9] The Claimant agreed that the letters he wrote to the Defendant implied that they were planning to have a future together and to have children. He and the Defendant had a joint account at the CBC Bank and the NCB Bank. He testified that the money in the CBC account belonged to him solely. It contained money from items sold by the Defendant on his behalf. The NCB account was the account in relation to the mortgage. He also agreed that he got a concession on the legal fees for preparation of the transfer documents and that the Defendant facilitated it. He also made a saving of \$15,250 based on the manner in which the transaction was done.
- [10] Under re-examination he agreed that the letters were his true feelings at the time.

[11] The Defendant testified that she met the Claimant in May 2000 while he was visiting St. Vincent and they commenced an intimate relationship. She enquired of the Claimant whether he had purchased any of the lands on sale in Rutland Vale and he requested her to make enquiries on his behalf. She contacted Mark Punnett and the Claimant held discussions with Mark Punnett. The Claimant requested her to view the land since he was returning to the U.S.A. The Defendant viewed the land and selected a lot on which Mr. Punnett was constructing a house for sale. The Claimant agreed to purchase the property for the sum of \$345,000. The Claimant instructed that the sale agreement be made between Mark Punnett and the Defendant since the Claimant had to return to the U.S.A. The Sale Agreement was executed on November 7, 2000. On December 6, 2000 the Claimant signed a general Power of Attorney in favour of her. She arranged a loan at the N.C.B. to facilitate the purchase of the disputed property. Due to her employment with Attorney Mr. Layne the Claimant did not have to pay any legal fees for the preparation of the Sale Agreement, Trust Deed and the Vesting Deed. Also the manner in which the documents were prepared created a saving of 5% Stamp Duty which amounted to \$15,250. Attorney Mr. Williams, who prepared the mortgage deed, waived one half of the legal fees as a result of her being the employee of Attorney Mr. Layne. It was always the common intention of the parties that the property would be for the benefit of both of them.

[12] On November 13, 2003 at the insistence of the Claimant she moved into the disputed property and remained there until June 13, 2006 when she left after receiving threats and abuse from the Claimant. She installed kitchen counters, a sink and burglar bars in the house which she removed when she was leaving. It was only after the relationship had broken down that the Claimant stated that the disputed property was not for the benefit of both of them. She denied that there was an agreement between herself and the Claimant for her to occupy the house so she could be in a financially sound position to be able to build her own home. It was the Claimant who told her that in view of all that she had gone through to acquire the property no one else deserved to own it but the two of them and for them to live in it together.

- [13] Under cross-examination she agreed that the Claimant paid all of the loan installments. The disputed property was being bought for the Claimant's sole benefit until he decided to add her name to the title deed. He made the decision before he made the Power of Attorney. She agreed she had no intention of getting married to the Claimant but to live in a common-law relationship. Shortly after they met she became pregnant and suffered a miscarriage.

ISSUE

- [14] The issue to be determined is who is entitled to the beneficial interest in the disputed property? If both the Claimant and the Defendant, in what proportion?

CLAIMANT'S SUBMISSIONS:

- [15] It was submitted on behalf of the Claimant that the Defendant acted as the agent of the Claimant in the acquisition of the disputed property and her name was added to the instruments of title by common agreement as a matter of convenience. The Defendant holds the beneficial half share in trust for the Claimant and her contribution, if any, was not of such a nature as to entitle her to an interest in the equity of redemption. In support of his submissions Learned Counsel for the Claimant referred the Court to the cases of Pettitt v Pettitt [1970] A.C. p. 777; Dyer v Dyer (1788) 2 Cox Eq. 92; Carlton v Goodman [2002] ECWA Civ. 545; and Re Gorman (1990) 1 WLR 616. In determining the beneficial interest the Court may consider extrinsic evidence, see Ali V. Khan & Others [2002] EWCA Civ. 974.
- [16] Learned Counsel further submitted that the Claimant alone is entitled to the beneficial interest since the evidence establishes that he alone provided the purchase price and the Defendant's name was only added as a temporary measure to safeguard her against potential action by his wife to evict her from the disputed property. The Claimant relies on the letters of March 5, 2001, April 3, April 10, and April 19.

- [17] Learned Counsel also submitted that the Defendant's claim of a common intention that the parties share the beneficial interest in the property equally is not supported by the evidence or the law. The Defendant's evidence does not indicate that she acted to her detriment on the common intention. Learned Counsel referred the court to **Goodman v Carlton** and **Lloyds Bank PLC v Rossett** [1990] 2 WLR 867.

DEFENDANT'S SUBMISSIONS

- [18] Learned Counsel for the Defendant submitted that the Defendant is entitled to one half share of the disputed property. Learned Counsel referred the Court to the Agreement for Sale, the Declaration of Trust and the Vesting Deed. There was a common intention for the parties to share the disputed property. As a result of the common intention she arranged savings on the stamp duty payable in the amount of \$15,250, waiver of the legal fees for the preparation of the Trust Deed and the Vesting Deed, and waiver of one half of the fees for preparation of the mortgage deed. Twenty per cent of the money in the CBC account belonged to her personally. The Defendant also acted to her detriment by signing the mortgage deed thereby reducing her credit standing. Learned Counsel referred the Court to several cases including the cases of **Bernard v Joseph** [1982] 2 WLR p. 1052; **Green v Green** 2003 UKPC 239; **Midland Bank PLC v Cooke** [1995] 27 HLR 133; **Kisner v Goulab** SLVHC 2001; **Cupid v Thomas** (1985) 36 WIR; and **Abbott v Abbott** P.C. No. 142 of 2005.
- [19] Learned Counsel further submitted that the principle of resulting trust is not applicable to this case. In any event the presumption is rebutted by the direct evidence of the Claimant's intention. No extraneous evidence ought to be allowed to correct, alter or qualify the intention of the Claimant which is clearly stated in the Declaration of Trust, the Vesting Deed and the Mortgage Deed. Learned Counsel referred the Court to the cases of **White v Vanderwell Trustees Ltd** (1974) Ch. 269; and **Goodman v Gallant** (1986) Fam. 106.

- [20] Learned Counsel also referred the Court to inconsistencies in the Claimant's testimony and urged the Court to find that he was not a credible witness.

FINDING OF FACTS

- [21] Having reviewed the evidence I find the following facts to be undisputed:

- (a) There was an intimate relationship between the Claimant and the Defendant which commenced during May 2002. Shortly after the relationship commenced the Defendant suggested and the Claimant agreed to purchase property in St. Vincent.
- (b) When the Claimant decided to purchase the property it was the common intention of the parties that the property would be for the Claimant's sole benefit.
- (c) The Claimant requested and the Defendant agreed to execute the Agreement of Sale since the Claimant had to return to the U.S.A. On November 7, 2000 a Sale Agreement was signed for the purchase of the disputed property by Mark Punnett and the Defendant.
- (d) On December 6, 2000 the Claimant issued a general Power of Attorney in favour of the Defendant.
- (e) The Claimant decided and the Defendant agreed that the Defendant's name would be included in the Trust Deed and the Vesting Deed as Tenant In Common in equal shares.
- (f) The purchase price for the disputed property was \$345,000. Part of the purchase price was paid by a loan of \$305,000 from the National Commercial Bank (NCB).
- (g) The Claimant has paid all of the mortgage installments thus far.

- (h) The legal fees for the preparation of the transfer documents were waived by Attorney Mr. Errol Layne as a result of the Defendant being his employee.
- (i) One half of the legal fees for preparation of the Mortgage Deed was waived by Attorney Mr. Douglas Williams as a result of the Defendant being the employee of Mr. Errol Layne.
- (j) As a consequence of the way in which the transfer was done by Mr. Layne the Claimant was not required to pay the 5% Stamp Duty which amounted to approximately \$15,250.
- (k) The Defendant resided in the disputed property between June 2003 and June 2006.
- (l) The Defendant connected the water and electricity to the disputed property and she paid those bills during the period she resided there.

[22] Having seen the parties testify and having reviewed their evidence and the documentary evidence I find that neither the Claimant nor the Defendant was wholly truthful in their testimony. There were inconsistencies in both the Claimant's and the Defendant's testimony.

[23] I find the following facts:

- (a) That the decision to include the Defendant as a tenant in common in equal shares was made after the agreement to purchase was made.

The Defendant testified that initially, the land was being purchased for the Claimant's sole benefit as his retirement home. He requested her to sign the Sale Agreement because he had to return to the U.S.A. While lying in bed and talking as lovers the Claimant discussed with her that he wanted her to have a beneficial interest in the disputed property. The

Defendant further testified that the Claimant made the decision before the Power of Attorney was made and after construction had started. The Power of Attorney is dated December 6, 2000. The undisputed evidence is that the intimate relationship started in May 2000. The Claimant returned to the U.S.A. in June 2000. He then returned to St. Vincent in October 2000 and left a few days before the Agreement for Sale was executed. The Agreement was executed on November 7, 2000. As stated earlier, at that time the disputed property was being purchased for the sole benefit of the Claimant. There is no evidence that the Claimant returned to St. Vincent in the year 2000 after he left before the Agreement for Sale was signed on November 7, 2000. I do not believe this aspect of the Defendant's testimony. The Claimant and the Defendant could not have held discussions in bed between November 7, 2000 and December 6, 2000 where he agreed for her to share in the beneficial interest in the disputed property.

Further in paragraph 3 of her affidavit dated 2nd April 2008 stated:

"Had the claimant not mislead one as to the status of his marriage I would not have embarked on such a serious relationship with the claimant, where we were planning to spend the rest of our lives together and making common plans for the future such as jointly acquiring a property for us to live in together; my being pregnant for the claimant at that time."

The Defendant exhibited a medical report by Dr. Timothy Providence dated 7th December 2007 in which Dr. Providence stated:

"Ms. Williams was seen by me on 20th June 2000 with a history of slight bleeding per vaginum for one day....her pregnancy test was positive.

A diagnosis was made and she was referred to the MCMH for an ultrasound."

The Defendant also exhibited a letter from Claimant date June 19, 2000 in which the Claimant wrote:

"It was so unfortunate that we lost our child but God knows best and I'm cognizant that we will have a child together."

The Defendant in her testimony stated that she became aware that she was pregnant at the end of June 2000 and she informed the Claimant in July 2000.

However under cross-examination the Defendant agreed that when the Sale Agreement was executed the property was being bought for the Claimant. Thus there could have been no common plan to jointly acquire a property for them to live in together while the Defendant was pregnant as stated by the Defendant in her affidavit of 2nd April 2008.

[24] I prefer the evidence of the Claimant on this issue. The evidence of the Claimant is that the Defendant's name was added to the title deed to satisfy the Defendant's concerns that he was married and his wife may seek to take legal action against the Defendant if she occupied the house and to assist her financially. At that time the Defendant was living in a rented house. I find the letters written by the Claimant to the Defendant which were exhibited by the Defendant show that the Defendant had some concerns with the marital status of the Claimant. In the letter of June 19, 2000 the Claimant wrote:

"I realize that you do have some concerns about my being married and I'm begging you to please bare (sic) with me through this process for both our happiness sake."

[25] In June 28, 2000 the Claimant wrote:

"Myrtle, as I mentioned in one of our many conversations, I'm depending on you for the happiness I never had in my life for all the years I've married and I'm sure you won't let me down. I know that you've had your fair share of disappointments in the relationship you've had over the years and that you're still not ready to open yourself to me just yet, but that's not a problem. Time heals all wounds and I know we'll get there finally. So as not to bore you with any more of what you sometimes regard as Grand Charging language I'll close now by reminding you that I love you very much and I hope that you will be patient with me while I go through this process of ridding myself of what I regard as my "Grenadian Menace."

[26] The Claimant also wrote on September 26, 2000:

"I know that you've already formed your opinion about where both our lives would go together but I promise to prove you wrong."

[27] Also, the Defendant in her testimony stated that when the Claimant told her he was in the final stages of divorce, she did not believe him because men do tell a lot of lies.

[28] The Claimant exhibited a letter dated March 5, 2001 in which the arrangement between himself and the Defendant in relation to the disputed property is outlined. The Defendant testified that she only saw the letter when it was exhibited with the Claim Form in this matter and the copy served on her had no signature. The unsigned letter was exhibited. The Defendant testified that the signature looked like her signature but vehemently denied it was her signature. She testified that she does not sign her name as "Myrtle Williams" but as "Myrtle L. Williams" as was done on her affidavits. However, when she was shown that she did sign the Mortgage Deed as "Myrtle Williams", she then admitted that she signed her name as Myrtle Williams on the Mortgage Deed. I do not believe the Defendant's testimony that she did not sign the letter on March 5, 2001. After vehemently denying that she signs her name as "Myrtle Williams" when confronted with her signature on the Mortgage Deed she was forced to agree that she did sign her name on the Mortgage Deed as "Myrtle Williams." Further, the Claimant in his affidavit in support of his claim which was filed on the same day as the Claim Form and in which the letter of March 5, 2001 was exhibited, outlined in paragraph 13 in detail the arrangement between himself and the Defendant and referred to the letter of March 5, 2001. The Defendant filed three affidavits in this matter and at no time did the Defendant make any reference to the letter of March 5, 2001. I find that the Defendant did sign the letter of March 5, 2001.

[29] In relation to the joint account at CBC, the undisputed evidence is that the account was initially the Claimant's account. He made the Defendant a joint holder of that account. The Claimant sent items from the U.S.A for the Defendant to sell and the proceeds were deposited into the account. The Defendant testified that about 20% of the money in the account was her money. I do not believe her. I believe the Claimant's testimony that the

account is his and the Defendant's name was added to facilitate his business of selling clothing.

[30] In relation to the 5% Stamp Duty the Defendant agreed in her testimony that the Claimant inquired how he could avoid paying the 5% Stamp Duty and he discussed the matter with the Attorney Mr. Layne and Mr. Layne advised him. She was not privy to the discussion between Mr. Layne and the Claimant. I therefore find that the saving of the 5% Stamp Duty which amounted to approximately \$15,250 is not a contribution made by the Defendant.

[31] In relation to the purchase price, the Defendant in her testimony agreed that the Claimant shipped materials to M. Punnett but testified he did so voluntarily. I believe the Claimant's testimony that the materials represented the remainder of the purchase price the NCB having provided a loan of \$305,000 of the \$345,000 being the full purchase price.

LAW

[32] Having reviewed the authorities cited by the parties and the case of **Stack v Dowden** [2007] UK HL 17, I find that the following principles are outlined in the cases:

- (a) There is a distinction between a conveyance into joint names which contains a declaration of trust of the beneficial interest and a conveyance into joint names which contains no such declaration.
- (b) Where the legal estate is conveyed into joint names and there is a declaration of trust of the beneficial interest of the property then that determines the beneficial interest conclusively. The doctrines of resulting, implied or constructive trusts are not applicable unless and until the conveyance is set aside or rectified.

(c) Where the legal estate in property is conveyed into joint names and there is no declaration of trust of the beneficial interest in the property, then on application to the Court, the Court will determine how the beneficial interest is held.

(d) The modern approach of the Court in determining parties' beneficial interest in property is the application of the doctrine of constructive trusts. In Stack v Dowden Walker LJ in outlining the approach to be taken referred to K. Gray and S.F. Gray Elements of Land Law 4th Edition 2005 p. 864 para. 10:21 where it is stated:

"In recent decades a new pragmatism has become apparent in the law of trusts. English Courts have eventually conceded that classical theory of resulting trust with its fixation on intention presumed to have been formulated contemporaneously with the acquisition of title has substantially broken down ... simultaneously the balance of emphasis in the law of trusts has transferred from crude factors of money contributions (which are preeminent in the resulting trust) towards more subtle factors of intentional bargain which are the foundational premise of the constructive trust... But the undoubted consequence is that the doctrine of resulting trust had conceded much of its field of application to the constructive trust, which is nowadays fast becoming the primary phenomenon in the area of implied trusts"

Baroness Hale summed the matter up at paragraph 60 in the following manner:

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

(e) In determining the beneficial interest the Courts will consider -

(i) whether it was the common intention of the parties that the parties should each share the beneficial interest in the property.

- (ii) If the answer to the first question is in the affirmative, then in what proportion was it intended they should share the beneficial interest?
- (f) Where there is direct evidence of the common intention of the parties the Court will give effect to it. But where there is no direct evidence the Court will ascertain the parties' common intention in the light of their whole course of conduct in relation to the property.
- (g) The onus is on the party seeking to show that the beneficial interest in the property is different from the legal interest and in what way.
- (h) The factors to be considered in determining the parties' intention include but are not limited to:
 - (i) Any advice or discussion at the time of the transfer which cast light upon their intention then.
 - (ii) The reasons why the home was acquired in their joint names.
 - (iii) The purpose for which the house was acquired.
 - (iv) The nature of the parties' relationship, whether they had children for whom they both had responsibility to provide a home.
 - (v) How the purchase was financed both initially and subsequently.
 - (vi) How the parties arranged their finances whether separate or together or some of both.
 - (vii) How they discharged the expenses in relation to the property and their household. When the property is in joint names and both are liable for the mortgage the inferences to be drawn from who pays for what may be different from the inferences to be drawn when only one is the legal owner of the property.
 - (viii) The parties' individual character and personalities may assist in showing where their true intentions lay.

[33] The person claiming to have a beneficial interest must show that he/~~she~~ acted to his or her detriment on the basis of the common intention. Nourse LJ in **Grant v Edwards** stated the requirement as follows:

“...this requires there to have been conduct on which the Claimant could not reasonably have been expected to act unless he was to have an interest in the property.”

[34] In determining the parties' respective share in the beneficial interest of the property, the Court will have regard to the whole course of dealing between the parties in relation to the property, taking into account all matters which throw light on the question what shares the parties intended. The approach in cases where the property is conveyed into joint names is not different than the approach in cases where the property is conveyed into the name of one party only, although that fact that the property has been registered in the joint names of the parties will be taken into account by the Court when having regard to the whole course of dealing between the parties in relation to the property.

APPLYING THE LAW TO THE FACTS

Who Has the Beneficial Interest in the Property?

[35] In this case the property is registered in both the Claimant's and the Defendant's names as tenants in common in equal shares. There is no declaration of trust in relation to the beneficial interest in the property.

[36] The Claimant claims that he is solely entitled to the beneficial interest in the property. The onus is on the Claimant to show that the beneficial ownership in the property is different from the legal ownership.

[37] The Court must determine whether there was direct evidence of the common intention of the parties. If no, the Court must ascertain their common intention in light of their whole course of conduct in relation to the property.

[38] In this case, I find that there is direct evidence of the parties' common intention. This direct evidence is to be found in the letter of March 5, 2001 which I found as a fact was signed by both the Claimant and the Defendant. The letter of March 5 outlines the reason why the Defendant's name was being placed on the transfer document. The letter states that the Claimant agreed to include the Defendant's name on the deed as a form of protection from legal action that can be taken by his wife against the Defendant for a period of two years until the Defendant had paid the balance of the loan for her land. By that time the Defendant would be in a better position to obtain a loan from the bank to build her own house. The letter of April 3, 2001 by the Claimant to the Manager of the NCB instructing that the transferred documents be in the joint names of the Claimant and the Defendant is in furtherance of the arrangement the parties agreed to in the letter of March 5 2001. Similarly in the second paragraph of the Claimant's letter of August 16 2001, the Claimant is simply giving a reason for his wife's actions.

[39] I find further that an examination of the parties' whole course of conduct in relation to the property shows that the common intention of the parties was that the Claimant would be the sole beneficial owner of the property.

[40] This is a unique case. The agreement for sale was signed about six months after the relationship started. When the vesting deed for the disputed property was executed the parties were in an intimate relationship for almost one year. The Claimant lived in the U.S.A. and the Defendant in St. Vincent. They planned to share a future together, to have children. The parties never lived together in a common law union either before or after the disputed property was acquired. The claimant provided all of the deposit for the purchase price by way of materials which he shipped from the U.S.A. to the seller. The remainder of the purchase price was provided by a mortgage of which the Claimant paid all of the mortgage installments. The Claimant paid all of the registration fees, all of the insurance premiums and the property tax. While the Defendant was jointly liable for the mortgage payments she having signed the mortgage deed, the Defendant agreed that it was the arrangement that the Claimant would pay all of the mortgage payments and he did so. The Defendant's only contribution to the disputed property was as a result of her status as

Clerk to Attorney Errol Layne, he waived the legal fees for the preparation of the transfer documents and Mr. Williams waived one half of the legal fees for the preparation of the mortgage deed. At this time the Defendant and the Claimant were in an intimate relationship and she was assisting him with the acquisition of the property and where she could save him cost, she did so, not with the intention or because she was to have a beneficial interest in the property. It was the Defendant who out of love and affection suggested to the Claimant that he should purchase property in St. Vincent. She located the area and selected the specific property. At that time she agreed that there was no common intention for her to have a beneficial interest in the property. The property was being purchased solely for the Claimant. The Defendant installed a kitchen counter when she moved into the house and removed it when she was leaving.

[41] While the Claimant and the Defendant had a joint account at CBC as stated earlier I found that the Defendant's name was added to this account for the purpose of the business of selling items for the Claimant. There was no pooling of resources. There was no pooling of resources to do anything in relation to the disputed property.

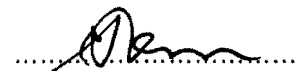
[43] The Defendant occupied the disputed property for about three years. She agreed that she only moved into the house after the Claimant insisted that she should move into the house. While she lived there she paid to install water and electricity and she paid the water and electricity bills. The Claimant did not maintain her.

[44] The Defendant stated very clearly in her testimony that she is a very independent woman. She had her own land which she was paying for. She intended to build her house on her land. It was not her intention for the Claimant to have any share in her land or house.

[45] In view of the above, I am satisfied that the Claimant has proved on a balance of probabilities that it was not the common intention of the parties that the Defendant should have any beneficial interest in the disputed property. Her name was added to the title deed for the purpose of giving her protection against any action his wife may seek to take against her.

[46] It is ordered that:

- (1) A declaration is hereby granted that subject to the terms of the Mortgage Deed dated the 4th day of May 2001 made between Andre Duffield Cottle and Myrtle Lucinda Williams and registered in the Registry of Deeds as Number 1466 of 2001 the Claimant is entitled solely to the equity of redemption in the property described therein as "ALL THAT LOT PIECE OR PARCEL of land situate at Rutland Vale in the Parish of Saint Patrick in the State of Saint Vincent and the Grenadines and being in extent Eight Thousand Two Hundred and Thirty-Five (8,235) square feet more or less as the same is more particularly shown and delineated as Lot Number 26 on a survey plan drawn by McArthur Robertson Licensed Land Surveyor and approved and lodged in the Lands and Surveys Department of the State of Saint Vincent and the Grenadines on 3rd March 1998 and bearing Registration Number 25 on or towards the South by Lot Number 27 on or towards the East by Lot Number 25 and a 20 foot road and on or towards the West by Lot Number 27 and a 27 foot road or howsoever otherwise the same may be butted bounded known distinguished or described Together with all buildings and erections thereon and all ways waters watercourses rights lights liberties privileges easements and appurtenances thereto belonging or usually held used or occupied or enjoyed therewith or reputed to belong or be appurtenant thereto."
- (2) The Claimant is solely entitled to possession of the said property subject to the said Mortgage Deed No. 1466 of 2001.
- (3) The Defendant shall pay to the Claimant cost in the sum of \$14,000.


Gertel Thom
HIGH COURT JUDGE