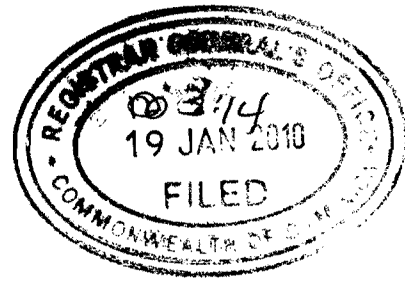


**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOM HCV 2004/0500**



BETWEEN:

VIDA JOSEPH

CLAIMANT

AND

MICHAEL CHARLES

DEFENDANT

**Mr David Bruney for the Claimant
Mrs Hazel Johnson for the Defendant**

2009: October 29th – 30th

November 10th

2010: January 14th

JUDGMENT

1. **STEPHENSON-BROOKS J.** This is an action brought by Vida Joseph, Mr. Charles' former girlfriend (*Miss Joseph*) against the Michael Charles (*Mr Charles*) claiming beneficial ownership or interest in business owned by Mr Charles which business is known as "A & C Enterprises"(A & C Enterprises). Joseph seeks to rely on her direct financial contribution to the business and the years she has actually worked in and assisted in developing the business as the evidence that she is in fact entitled as she claims and of course Mr Charles denies any such contribution by Miss Joseph. In fact Mr Charles contends that at all material times Miss Joseph was merely an employee of the business.

2. The problem in this case is a familiar one and happens when a man and woman enter into a romantic relationship and together get involved also in a business relationship and when the intimate romantic relationship is over one of the parties usually who perceives him or herself to be the injured one turns to the Courts for assistance to retain some of the interest he or she perceives they may have in property and in this case in the business A & C Enterprises. The Court in this instance is asked to rule on a dispute between Miss Joseph and Mr Charles as to whether Miss Joseph has a beneficial interests in the business known as A & C Enterprises.

3. Miss Joseph's contention gives rise to the issue of a constructive trust. The law on this area is replete with authorities and judicial pronouncements that is not necessarily easy to reconcile. The principles to be considered and applied was re-stated in the case of **GRANT v EDWARDS**¹ by Sir Nicholas Browne – Wilkinson VC in these terms:

“If the legal estate in the joint name is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a beneficial interest has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated: (a) that there was a common intention that both should have a beneficial interest; (b) that the Claimant has acted to his or her detriment on the basis of that common intention.”

4. Essentially, the House of Lords and the Court of Appeal in the UK have stated the issues to be taken into consideration by the Court in the matters of **Lloyds Bank PLC –v- Rosset**² and **Grant –v- Edwards**³ that is to say the

¹ [1986] EWCA Civ 4 (24 March 1986) [1986] All ER 426

² [1991] 1 AC 107

³ [1986] Ch 638

"the Court first has to ask itself whether there have at any time prior to acquisition of the disputed property, or exceptionally at some later date, been discussions between the parties leading to any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. Any further investigation carried out by the court will vary in depth according to whether the answer to the initial inquiry is "yes" or "no". If there have been discussions of that kind and the answer is therefore "yes" the court then proceeds to examine the subsequent course of dealing between the parties for evidence of conduct detrimental to the party ..."

5. The dispute between the parties in this case centres around the following:
 - (i) Whether Miss Joseph's involvement in the business of A & C Enterprises was solely as an employee or as a business partner in other words as Counsel for the Defendant stated in her written submissions, whether "she made such direct or other financial contribution to the Defendant's business, as to entitle her to an interest in that business on the bases of a resulting or constructive trust" and "if so the extent of such interest".
6. Essentially the Court's task can be stated like this "whether there had been at any time prior to Miss Joseph being involved in A & C Enterprises or at some later date during that association with the business, discussions between the parties leading to an agreement, arrangement or understanding between them that the Miss Joseph was to have a beneficial share in the business enterprise".
7. If the answer is yes then the Court's further task is to examine the subsequent course of dealing between the parties for evidence of conduct detrimental to the claimant without any formalities in place which could be relied on to establish the arrangement in question.

8. If there has been no such discussion or agreement between the parties the court is to examine the conduct of the parties, to scrutinise all events capable of throwing evidential light on the question whether in the absence of and expressed discussion or agreement there could be a presumption of intention based on the parties' actions.
9. I will now review the evidence that has been placed before the Court and to which I am expected to apply the legal test in matters such as these to arrive at an answer to the question. Has Miss Joseph proved her case on the balance of probabilities?
10. I do not propose to restate everything that was alleged by the parties in their evidence. I would however hasten to say at this juncture that I find that neither party had a monopoly of truth in presenting their case to the court. I have had the opportunity to listen carefully to the witnesses and to observe them whilst they testified, I have also had the opportunity to review the witness statements tendered by the parties as their evidence in chief and I found the evidence from the witnesses during the skilful cross examination by both Mrs Johnson and Mr Bruney to be very helpful, the cross examination of both counsel tested the credibility of the each witness and the reliability of same.
11. I find that both of the parties before the court were less than candid and they both sought to embellish their stories and neither of them was entirely forthright about the matter.
12. Miss Joseph, I find made more of her contribution in an effort I believe, to persuade the court of her contribution or rather to increase the size of her contribution to the business in question.
13. On the other hand Mr Charles, I find went out of his way in his oral evidence under cross examination to try and persuade this court that the claimant was at all times an employee and to minimise her role in the business. It is to be noted that the Defendant's demeanour and body language in the Court gave him away in that it showed that the Defendant was not being candid or being entirely a witness of truth.

14. I find that both parties were given to exaggeration and wish to state that my findings which follow in this judgment represents part acceptance and part rejection of each party's evidence as well as inference drawn from their words, demeanour in court, actions and the documentary evidence which has been accepted into evidence.

The facts presented to the Court:

Miss Joseph's role in the business A & C Enterprises:

15. Miss Joseph a then 19 year old young lady and Mr Charles aged 27 years met in 1982 and commenced a romantic relationship which lasted for about 20 years; it seems to have come to an end in 2002. During that relationship Miss Joseph bore him a son who is now 21 years old.
16. When the parties met Miss Joseph had just left school and was unemployed while Mr Charles was employed part time at the port as a tally clerk where he claims he worked one day a week.
17. It should be noted that I do not accept that Mr Charles worked part time at the port for only one day for this reason, he later in his evidence says that he borrowed money from Barclays bank and that loan of EC\$20,000 was repaid by automatic deduction from his check at Dominica Stevedores Ltd. I find it highly unlikely that the earnings of a tally clerk who would be way down the totem pole as far as management of any organisation would be concerned working one day a week would suffice to service a bank loan. I find that the Mr Charles was not truthful in this regard. I find as a matter of fact that Mr Charles worked more than one day per week at the port as he claimed.

18. The defendant in 1985 (*after he commenced his relationship with Miss Joseph*) started up a business whereby he offered copying services to the public, this was followed by an attempt by he and his friend Samuel Austrie to go into the car rental business which was named A & C Enterprises. We are told that this business never got off the ground as Mr Austrie migrated. Mr Charles however retained the business named and expanded the business to include making and selling rubber stamps.
19. Mr Charles is no doubt a very industrious and ambitious business man. We see that he entered into yet another business venture where he perceived a need in the market for industrial and medical gases and embarked upon yet another endeavour to make money by becoming a supplier.
20. Mr Charles says that when Miss Joseph became involved in the business that it was only on the one day a week that he was out of the shop at work on the Port and she mined the business for him. Since I do not accept that Mr Charles worked only one day a week at the port I find that Miss Joseph was present in the business on more than one day a week and that she more than likely or most probably worked on every working day of the week as she contends.
21. Miss Joseph says when her then boyfriend Mr Charles "suggested that we start a business together and being "young and in love I responded in the affirmative" she over the next 21 years worked in the business daily and helped in a material way to develop the business and that she even put herself at risk by taking a loan from the Credit union to inject capital into the business. It should be noted that I find that in doing so Miss Joseph would have dedicated most of her working life to the development of A & C Enterprises to her own detriment in that she could have been working elsewhere achieving security of tenure and most probably climbing the corporate ladder. I accept Miss Joseph's evidence that Mr Charles suggested that they start a business.

22. Mr Charles in an attempt to minimise Miss Joseph's role in the business contends that as the years went on Miss Joseph came to the shop more often and took more of an active part in assisting to run the business and that he saw her role as being merely a Sales clerk and that in 1996 he proceeded to pay her a salary as such. It is to be noted that that would have been some fourteen (14) years after Miss Joseph first became involved in the business. Miss Joseph on the other hand contends that she was involved more in the line of a manager and business partner than a mere sales clerk. The Court accepts her evidence in this regard.

23. It is to be noted that Mr Charles says that Miss Joseph took money freely from the business to meet her needs and that he gave her various sums of money from the business as requested by her and that also he met her utilities and maintained her and his son freely. The question then has to be asked, is this the behaviour and activities of a mere employee or a co – owner so to speak? I would think that the answer to that would be co-owner and most certainly not that of a mere sales clerk. I find that these facts raise the inference that there was an understanding between the parties or a common intention that Miss Joseph had some sort of proprietary interest in the business. It is to be noted that the law as I understand it is that a constructive trust may arise in such circumstances.

24. This went on until the relationship broke down. Mr Charles said in his witness statement that after the relationship between he and Miss Joseph broke up she stayed with the business for about one year and during that time she "continued on as my employee until April 14 2003. During the period 2002 to April 2003 I paid the Claimant a monthly salary of \$1,000.00. All payments were made by cheque except on one occasion I paid her in cash and requested a receipt. She never gave me a receipt" It should be noted that this type of payment was done only after the relationship broke up and he was trying to treat her like an employee and distance her from the business.

25. What is the Court to make of Mr Charles' evidence in this regard, having regard to what he is asking me to believe. That all along Miss Joseph was an employee when in fact I find that on the evidence presented that he only treated her as an employee after the relationship was over. He went from freely giving her money from the business and her freely taking money from the till to paying her by cheque and when he paid her by cash he asked for a receipt. Clearly before the relationship was over Mr Charles treated Miss Joseph as a manager or partner in the business with all the rights that goes with it and certainly not as an employee. Mr Charles did not see it fit to pay regular social security deductions for Miss Joseph as is required of an employer, why is this because I dare say Miss Joseph was not an employee in Mr Charles eyes.
26. I will state now that I do not accept Mr Charles' evidence that Miss Joseph was an employee when she was associated with the business during the period 1985 to 2002 and that would be 17 plus years.
27. Miss Joseph spoke about going to the business every day and that she "single handedly ... provided all the services necessary to import the raw materials and to process it into a rubber stamp." ... that she "did all the marketing and sales for the business". I accept Miss Joseph evidence in this regard and find that her actions were that of a person who was committed to the development of business that she had a personal interest in.
28. I accept Miss Joseph's evidence that it was agreed with Mr Charles prior to her involvement in the business that "Michael Charles would contribute the initial capital and that I would contribute to the management, labour and skills required for the effective and efficient operation of the business".
29. Miss Joseph was quite adamant under cross examination about her role in the business she said "I did everything at "A & C", from the time the door open to the time it closed. The paper work and everything ... I did everything" having observed Miss Joseph's

demeanour I find her a witness of truth in this regard and accept that she played not the marginal role as Mr Charles sought to persuade this Court but an integral part in the development and sustaining of the business.

30. Miss Joseph described in great detail her role and functions in the business which role Mr Charles is asking this Court to marginalise.

The Loan from the Credit Union

30. Miss Joseph gave evidence that she took a loan in the sum of EC\$18,000 to inject capital into the business. Mr Charles says he knows of the loan which Miss Joseph took but states that it was not taken in order for her to inject capital into the business but to purchase a piece of land from him.

31. It is not hard to understand that for the Claimant to obtain a loan from the bank, she had to have a purpose for the application and she had to be prepared to offer security for the loan. It is therefore understandable that she informed the bank that she was purchasing the property The property would have had to be transferred to her in order for the bank to have loaned her the monies she sought. Therefore I cannot find that it was a total lie that the Claimant borrowed the money to purchase the land. The issue to my mind is, what prompted her to borrow the money? Was it her way of raising capital to inject into the business or was it primarily her acquiring property for her and her young son?

32. The Defendant is asking this court to believe that it was her way of acquiring property for her and her son and it was an opportunity for him to raise some money for additional income...one wonders at this stage what was the purpose of the need of additional income ... it can be seen from the Defendant's evidence that clearly it was to raise capital to inject into the business as there is no evidence before the Court of the Defendant doing anything else with his life save than to work at the Port and

develop the business of A & C I therefore find as a matter of fact that this deal was in essence killing two birds with one stone that it allowed the Claimant to assist the Defendant to raise the needed additional income and at the same time to make an investment for herself and child. She by obtaining the loan put herself at risk and in fact acted to her own detriment, which later resulted in her losing her shares in the Credit Union when the loan became delinquent.

33. It should be noted that the Defendant said under cross examination that "there was a particular lot there is another 1500 square feet which could only be utilized by that person" My thinking is that I should not sell it to somebody else so I suggested that I could sell her that lot and I would put it in trust for the boy our son" this statement to my mind conveyed that Mr Charles was willing to give the land to Miss Joseph for the benefit of his son, he was not selling the land in the strictest sense of the word. I therefore find as a matter of fact that Miss Joseph borrowed the land from the Credit Union to raise funds to inject capital into the company. It should be noted that I have formed the view also that Miss Joseph did not have to purchase the land that Mr Charles saw the transfer as transferring land to her in trust for their son.

34. I hasten to say that this Court is not in anyway condoning Miss Joseph's lies to the Credit Union and I must say that Mr Charles was very much a part of the lie. He was in "cahoots" with Miss Joseph in this transaction. Morally it is not right or correct for persons to lie to any funding or banking institution on the loan applications as inevitably the lies come back to haunt you.

35. I now turn to the purchase of the land and the building and I do not intend to give any prolonged dissertation on this issue of the case more than to say that I find that I accept that Miss Joseph did not know much of the transactions regarding the acquisition of this aspect of the business and that in fact Mr Charles purchase of these fixed assets were entirely his doing. I have formed the view that Miss Joseph was

more concerned with the day to day running of the business and the marketing of its services.

36. I find that even if I am wrong on the matter of common intention, there is evidence of the detriment suffered by the Claimant in reliance on the common intention claimed.

37. I have had the benefit of reading submissions filed by both parties in this matter. The said submissions both have comprehensively set out the case and evidence in support of the respective cases. Together with the Statements of Case and the oral and written evidence in this matter, a sufficiently clear picture has emerged to make a determination as to the rights of the respective parties. Only those aspects of the evidence reviewed above needed to be held out for scrutiny and analysis herein. The evidence of Erica Joseph was of no moment in this matter and has been disregarded by the Court.

38. Accordingly I find that based on the actions of the parties before the court and on the aspects of the evidence that I accept from Mr Charles and Miss Joseph my findings are as follows:

- (i) That Miss Joseph was not an employee of the business as Mr Charles sought to allege and that her involvement was in reliance to Mr Charles' invitation to start a business together;
- (ii) That Miss Joseph has proved on the balance of probabilities that she was involved in the day to day running of the business, marketing and daily management of the business and in so doing materially contributed to the development and sustaining of the business.
- (iii) That Mr Charles was the brain and strength behind the business and in fact was the founder of the business so to speak.
- (iv) That Mr Charles purchased the land for the benefit of the business.

- (v) That Miss Joseph is now totally out of the business while Mr Charles continues and will continue to enjoy and reap the benefits and profits of the business.
- (vi) That Miss Joseph is entitled to a beneficial interest in A & C Enterprises.

39. Based on the evidence before this court and laying emphasis on the evidence of her involvement in the business in the day to day running of the business, sales and marketing and the fact that Mr Charles bore the responsibility of purchasing the land on which the Business stands. Based on the fact that Mr Charles has the business and Miss Joseph is out of it.

40. Having found that Miss Joseph has met the requirements for acquisition of an interest in A & C Enterprises. *I am obliged to and I have looked at the parties whole course of conduct in relation to the business which was taken into account in determining their shared intentions as to its ownership.*

41. On the issue of quantification of Miss Joseph's interest in "A & C Enterprises", it is to be noted that she is in the same position of the wife establishing her share in the matrimonial property and I find the the following passages in the celebrated case of **Gissing v Gissing**, as providing useful guidance;

"I take it to be clear that if the Court is satisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made on this understanding, the court in the exercise of its equitable jurisdiction would not permit the husband in whom the legal estate was vested and who has accepted the benefit of the contributions to take the whole beneficial interest merely because at the time the wife made her contributions there had been no express agreement as to how her share in it was to be quantified. In such a case

⁴ Per Lord Diplock

the court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse on which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently. It is only if no such inference can be drawn that the Court is driven to apply as a rule, and not as an inference of fact, the maxim “equally is equity” and to hold that the beneficial interest belongs to the spouses in equal shares.”

39. Lord Reid later said in the said *Gissing v Gissing* :

⁵ “It is perfectly true that where she (meaning the wife) does not make direct payments towards the purchase it is less easy to evaluate her share. If her payments are direct she gets a share proportionate to what she has paid. Otherwise there must be a more rough and ready evaluation. I agree that this does not mean that would as a rule get a half share. I think that the high sounding brocard “equality is equity” has been misused. There will of course be cases where a half share is a reasonable estimation, but there will be many others where a fair estimate might be a tenth or a quarter or sometimes even more than half.”

[60] And Lord Pearson in the same case said:

“No doubt it is reasonable to apply the maxim in a case where there have been a very substantial contributions

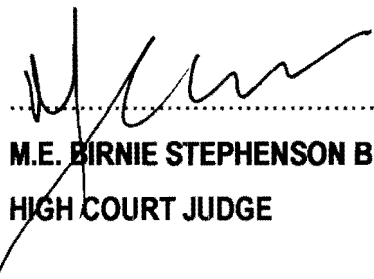
(otherwise than by way of advancement) by one spouse to the purchase of property in the name of the other spouse but the proportion borne by the contributions to the total price or cost is difficult to fix. But if it is plain that the contributing spouse has contributed about one-quarter, I do not think it is helpful or right for the court to feel obliged to award either one-half or nothing.”

I have taken into account that even though Miss Joseph worked in the business and made some financial contribution to the Business that for the business to have been sustained producing rubber stamps and doing photocopies there must have been a more substantial capital injection by Mr Charles. I am also taking into account that Mr Charles also purchased the land on which the building stands on directly and that he was the directing mind of the business his share in the business has to be more than Miss Joseph's and I most certainly do not intend to give her 50% of the business in fact I am of the view based on the evidence of Miss Charles involvement in the business that her interest could be quantified at 25%.

40. Taking all the evidence produced to the Court that is the loan and her personal effort in manning the business and building it up I would declare and award Miss Joseph a 25% interest in the business A & C Enterprises.
41. Miss Joseph is asking this court to declare that she owns an interest in the building, based on the evidence before this court I am unable to make such a declaration and will decline to do so.
42. It is Ordered and declared that Claimant Miss Vida Joseph is entitled to a twenty-five percent (25%) share in the business A & C Enterprises the Defendant to the remaining seventy- five percent (75%) share in the business.
43. I would also order that the business be evaluated by a registered licensed practicing accountant in Dominica who shall be instructed within 28 days of this judgment and that Miss Joseph 25%

interest be evaluated and expressed in a dollar amount and that the Defendant pay the said amount to the Claimant within 45 days of the completion of the valuation.

44. As it regards the Loan balance, I find that based on the evidence before the Court this loan is entirely Miss Joseph's Loan; it is a loan which she took personally to inject capital into the business. I do not find that it is the business' obligation to pay the loan or is it Mr Charles' obligation so to do and accordingly I am unable to make the order as prayed in this regard.
45. I will not be making an award as to damages in this matter as I see no basis for doing so.
46. I will now invite Counsel for each side to address the Court on the issue of costs. Submissions to be made in writing within 10 days of today's hearing and a ruling will be delivered within one week of Counsel's submissions.
47. I wish at this stage to thank Counsel for their professional conduct of this matter and for the assistance rendered in their written submissions.


M.E. BIRNIE STEPHENSON BROOKS
HIGH COURT JUDGE

