SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(Civil)

Suit No: 385 of 1993

Between:

CLAUDIA ALEXANDER

- Plaintiff

VS

GILLS DANIEL

- Defendant

Appearances:

Mr. K. Monplaisir Q.C. for the Plaintiff
Mrs E. Ernest for the Defendant

1999: June 22nd
July 09th.

JUDGMENT

d'AUVERGNE J,

The Plaintiff and the Defendant had been sharing an intimate relationship since 1974 and together they have two sons, one born in November 1979 and the other in February 1985.

In June 1983, the Plaintiff bought a piece of land at the La Tourney Development in the Quarter of Vieux-Fort and about one month later the parties agreed to build a wall house on the said piece of land since they "had plans to live together as man and wife".

As a result of this common intention the Plaintiff took loans from the National Commercial Bank of St.Lucia in the sum of $60,000.00.

Before the granting of the first loan the Plaintiff's mother loaned her $4,000.00 in order to start the construction. The house was to be a two-

storey building. The parties started the building of the upper storey within the same year with the Plaintiff paying for the materials and the Defendant making the blocks on his spare time and on weekends; with the help of his friends the foundation to the house was dug, other workers were employed to assist in the construction while he acted as supervisor to the entire project.

In or about the months of July or August 1988, the Defendant moved into the incomplete house. He first occupied the bottom storey of the house and early in 1992 he moved to the top storey where he remained till 31st March 1999.

By letter dated the 30th day of April 1992 the Plaintiff served the Defendant with notice to quit the said premises on or before the 30th June 1992 and finally by writ of summons filed on the 18th day of June 1993 she claimed against the Defendant the following:

1. An order for possession of the plaintiff's property at La Tourney aforesaid.
2. Damages
3. The costs hereof.

An appearance was entered on behalf of the Defendant on the 9th of July 1993 and on the 6th of October 1993 a Defence and Counterclaim was filed, the gist of which was that the Defendant admitted to the Plaintiff's ownership of the parcel of land but pleaded that he was entitled to half share of the house which the Plaintiff denied in her counterclaim and at the trial.

A consent order was entered in the sum of $35,000.00 to be paid by the Plaintiff to the Defendant no later than 31st July 1999 and that the Defendant do give up the premises no later than the 31st of March 1999.

On the 10th of June 1999 that Consent Order which had not been perfected was set aside and the matter was set for a speedy trial on the 21st and 22nd of June 1999. The matter came to trial as aforesaid, the Plaintiff

and her cousin, Royden Barley, a trained construction technician gave evidence on behalf of the Plaintiff while the Defendant and his friend, Hadrian Monrose, a trained construction and architectural design technician gave evidence on behalf of the Defendant.

The real bone of contention as I have mentioned before is that the Defendant is claiming half share in the house which his witness valued at $223,860.00¢. as a completed house and even after agreeing to the fact that it was an incomplete structure he would not reduce on the assessment placed. He also told the Court that the assessment done by the other expert was incorrect, "*it was wrong*".

The Defendant told the court that he transported water, he supervised the work provided labour for the concrete blocks for the upper storey and two small loans from the Bank of Nova Scotia which amounted to $9,000.00¢. He tendered bills for building materials supplied to him for the year 1983 and two other bills for materials taken on the 29th of April 1989 and the 18th of May 1989 in the sum of $5,419.65¢ and $759.20¢ respectively, making a total of $6,178.85¢. The Plaintiff told the Court that she did not dispute the fact that the Defendant bought building materials for the house in 1983 but she gave him the money to pay for them. She however denied that he bought any building materials for the completion of the house in the sum of $6,178.85¢ in 1989.

The Defendant told the Court "*I made additional blocks for the bottom of the house, the Plaintiff supplied the materials from the loan money*". The Defendant also told the Court that he assisted the Plaintiff with the loan repayments but Plaintiff denied this statement. She told the Court that the monies she received from the Defendant was maintenance for their

Both Counsel quoted the case of **Cook v Head 1972 2 ALL E.R. page 38.** Learned Counsel for the Defendant urged the Court to consider the common intention of the parties through the evidence of the parties, their earning capacity, the Defendant was employed as a Postman earning $856.00 per month and overtime, that he gave evidence of his contribution towards the mortgage loan. His two small loans as further cash contributions and his direct labour of block making and supervising the construction.

She stressed that particular attention must be given to the valuation of the Plaintiff's Assessor who is her first cousin.

She concluded by stating that the Defendant was always a co-owner and was entitled to his share of the property after the deduction of his rent free tenancy of the premises and could not be asked to leave in the tone of the Notice to Quit without the assessment of his contribution.

She quoted the case of **Hack v Rahieman (1977) 27 WIR Page 109** (a case based on the **Cook v Head** principle).

Learned Counsel for the Plaintiff conceded from the outset that the house was intended to be built for the joint benefit of the parties and therefore the Defendant was entitled to a share but contended that Defendant was never entitled to a half share.

He argued that the copy of the promissory notes to the bank of Nova Scotia in the sum of $9,000 should be disregarded since the cash could have been used for anything else.

He further argued that the Defendant had used up all his interest in the house, for on his own admittance he lived rent-free for at least 6 years, that taking the monthly rental value of the house at $500.00¢ (Plaintiff said

$6,000.00 whereas the Defendant said $400.00) the amount would be $36,000.00¢.

He again contended that the Defendant lived from 1988 to 1992 rent free at a rental of $250.00 since the house was more incomplete than it was in 1992, the amount would be $12,000.00 making a grand total of $48,000.

He argued that the Defendant's share amounted to quarter share (1/4) of the house which would be $40,000.00 and therefore he was entitled to refund the Plaintiff the sum of $8,000.00.

Conclusion

I will begin by stating that the fact that someone is a relative (moreso, an expert) of the party on whose side he or she is being called to be a witness, does not mean that, that witness's evidence is to be discredited.

It is the duty of the judge sitting without a jury to weigh the evidence and say whether he or she believes the witness or not, having taken into consideration that there could be a likelihood of bias because of the blood relationship. Having said this, I now say that I accept the assessment of Roystan Bailey and reject, in its entirety, that of Hadrian Monrose.

Having considered all the evidence and the guidelines set down in **Cook v Head** which held that "whenever two parties by their joint efforts acquire property to be used for their joint benefit, the Courts may impose or impute a constructive or resulting trust. The legal owner is bound to hold the property on trust for them both".

It is trite, that the case should not be approached by looking at the many contributions and dividing up the beneficial interest according to those contributions but at the worth of the equity when the parties separated.

I agree with Counsel for the Plaintiff that the Defendant should be entitled to quarter share. I find this to be a fair share. (**Gissing v Gissing 1970 2 ALL E.R. at 793** applied). He is therefore entitled to twenty-five percent (25%) of $160,000.00 which is $40,000.00.

The period of occupation of the premises by the Defendant must be taken into consideration but I do not agree with counsel for the Plaintiff that it is from 1988 for at that time there was still the common intention to live together eventually.

The notice to quit demanded that the Defendant vacate the premises by June 30th, 1992 therefore it is my view that the tenancy started from 1st July 1992 to 31st March 1999 a total of 6 years and 9 months – 81 months at $400.00 (the rental set by the Defendant) amounts to $32,400.00.

Simple subtraction will show that the balance from $40,00.00 is $7,600.00.

My order is therefore as follows:

That the Plaintiff do pay the sum of Seven Thousand Six Hundred Dollars ($7,600.00) to the Respondent.

That there will be no order as to costs.

SUZIE d'AUVERGNE
High Court Judge