SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.17 OF 2003

BETWEEN:

LORNA ANGELICA DORE

Appellant

and

JAMES MICHAEL DORE

Respondent

Before:

The Hon. Mr. Adrian Saunders	Chief Justice [Ag.]
The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon Mr. Hugh Rawlins	Justice of Appeal [Ag.]

Appearances:

Dr. Henry Browne for the Appellant
Mr. Theodore Hobson with Ms. Farida Hobson for the Respondent

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2004: July 28;
2004: November 2;
2005: February 28.

JUDGMENT

[1] GORDON, J.A.: This appeal came before the Court on the 28th July last year. After hearing arguments by Counsel for both the Appellant and the Respondent the Court invited both sides to return to the bargaining table to explore the possibility of settlement and the matter was adjourned to the next sitting of the Court in this jurisdiction. In November 2004, when the Court next sat, the parties announced that they had been unable to come to a settlement. In the circumstances the Court delivers itself of this judgment.

[2] On 26th July 1984 the Appellant and Respondent were married in Charlestown in the Island of Nevis and on the 17th April 1991 a decree nisi was granted in respect of the marriage. On 8th February 2002 the Appellant filed an application for Ancillary Relief. In that application the Appellant sought two things. One was custody of the children of the marriage and the second was a determination of her interest in the family home. At the hearing at first instance the issue of custody was abandoned, leaving only the issue of property to be determined.

[3] The learned trial judge found that the Appellant did not have any interest in the matrimonial property. The Appellant has appealed that ruling on the ground that the Appellant did contribute to the ability of the family to acquire the marital home and that, that fact gave rise to the existence of a common intent between the parties to share the marital home; that the Appellant acting on that common intent acted to her detriment and as such was entitled to a one half interest therein.

[4] The background facts relating to the matrimonial property in this case are as follows: the land on which the matrimonial home is located was given to the Respondent by his father and the matrimonial home was built thereon financed by a loan from the St. Kitts Development Bank in the sum of $53,000.00. There is no dispute that the Respondent was the only one of the couple who serviced that loan. However, the Appellant asserts that she paid all household bills, bought food for the family and took care of the children's school and personal needs. The funds for doing this, she alleges, derived from her operation of a grocery store (concerning which see below). In addition, the Appellant asserted that whilst the matrimonial home was being built, she took time out to cook for all the men on the construction site and in the nights after closing the store she would go to the site and 'help pound stones and mix mortar.'

[5] The law governing divorce and financial settlement thereafter in the Federation is the Matrimonial Causes Act Cap 50 dating from 1948. The Act contains little of the

flexibility to be found in the modern Divorce Acts to be found in other jurisdictions of the Eastern Caribbean Supreme Court. As I read the Act, and as the case was argued by both the Appellant and the Respondent both before this Court and in the Court below, the Respondent's claim to share in the matrimonial property could only be based on the finding that an implied or resulting trust arose from the surrounding circumstances of the parties' relationship and interaction.

[6] It now becomes necessary to address the grocery store run by the Appellant adverted to at paragraph 4 above to place in context the contributions claimed to have been made by the Appellant. I can do no better than quote from the judgment of the learned trial Judge at paragraph 9 where he says:

> "The evidence shows clearly that in 1984 Mr. Dore built a wooden tenement for Mrs. Dore to operate a grocery shop. In 1986 he built a more permanent structure for a shop and negotiated a loan of $10,000.00 from the Foundation for National Development for that purpose. He also invested $14,000.00 in stocks for the shop. It is pellucid that in spite of the monthly mortgage payments undertaken by Mr. Dore he was still seized of sufficient funds, whether by loan or otherwise to enable him to make substantial investments in the grocery shop. To my mind Mr. Dore essentially financed the grocery shop. This is the very shop from which, according to Mrs. Dore's evidence she met all household expenses from the proceeds of sale, thus enabling Mr. Dore to meet the mortgage payments. It would certainly be unreasonable to conclude in the light of the evidence that Mrs. Dore's payment of the household bills enabled Mr. Dore to meet the mortgage payments. I accordingly do not accept Mrs. Dore's evidence in that regard"

[7] In Burns v Burns[1], though the parties were not married a similar situation arose. In that case the parties set up home together in rented accommodation in 1961. In 1963 the defendant decided that it would be a better use of his money to buy a house. The house was purchased and conveyed in the sole name of the defendant who financed the purchase price out of his own money and by way of a mortgage. The plaintiff did not contribute directly to the purchase price or to the mortgage payments. The Plaintiff remained at home looking after the household and the children of the union until 1975 when she went out to work. Although the

[1] [1984] Ch. 317

defendant continued to give her a generous housekeeping allowance and did not ask her to contribute to the household expenses, she used her earnings to pay the rates and the telephone bills and to buy furniture, fixtures, fittings and certain domestic chattels for the house. The Plaintiff left the defendant in 1980 and brought proceedings against him claiming a beneficial interest in the house. The Court of Appeal in England held that since the plaintiff had not made a substantial financial contribution to the acquisition of the house the court could not impute a common intention that she should acquire a beneficial interest in it.

[8] Perhaps the *locus classicus* on this subject, however, is the statement by Lord Bridge of Harwich in the House of Lords decision in Lloyds Bank PLC v Rosset[2] where he said the following:

> "The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.
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> In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage installment, will readily justify the inference necessary to the

[2] [1991] 1 A.C. 107 at p 132

creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do." (my emphasis)

[9] Applying Lord Bridge's dictum I am of the view, and I do so hold, that the Appellant has failed to satisfy the test that would permit this Court to find that an implied or resulting trust in the property of the matrimonial home arose in her favour and so would dismiss this appeal.

[10] In the course of argument learned Counsel for the Respondent stated to the Court that he would have no objection to the Appellant having 100 per cent of the shop, the learned trial Judge having ordered that the Respondent had a 25 per cent interest therein. I believe that this would be a just solution, particularly in the light of the presumption of advancement which would operate to the advantage of the Appellant.

[11] In the circumstances I would dismiss the appeal but vary the learned trial Judge's order only to the extent that the Respondent shall have no further interest in the shop. In this appeal I will make no order as to costs, not upsetting the trial Judge's order in that regard.

Michael Gordon, Q.C
Justice of Appeal

I concur.

Adrian Saunders
Chief Justice [Ag.]

I concur.

Hugh Rawlins
Justice of Appeal [Ag.]