

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

(CIVIL)

CLAIM NO: ANUHCV 2006/0653

In The Matter of an application under the Married Women's Property Act

And

In the matter of an application by BRENDA SYEELEY PHILIP for the determination and division of matrimonial property

BETWEEN:

BRENDA SYEELEY PHILIP

Claimant

-And-

HESKETH ARTHURTON PHILIP

Defendant

Appearances:

Mrs. Stacey-Anne Saunders-Osborne for the Claimant

Mr. Vernon Tomlinson for the Defendant

.....
2007: October 2, 17

2008: January 30
.....

JUDGMENT

[1] **Harris J:** These are proceedings between a husband and wife about the beneficial ownership of their matrimonial home. It is brought by the wife under the Married Women's Property Act, Cap. 267 and concerns the parcel of land more particularly described in the Land Registry as Registration Section: Pares, Block number: 24 2688C, Parcel Number: 240 Antigua and Barbuda.

[2] Mr. and Mrs. Philip were married on the 14th of February 1980 in the Parish of St. George Antigua, a union that bore two children now over the age of 16 yrs. The marriage lasted 23 years until they separated on or about 28th April 2003.

- [3] The Claimant/Wife (Mrs. Philip), avers that from very early into the marriage the relationship between the Defendant/Husband (Mr. Phillip) and herself began to deteriorate as a result of the husband being physically abusive to her. She did not specify exactly when this deterioration began.
- [4] The wife (Mrs. Philip) said that in or about 1980 in light of the fact she and her husband were getting married they decided to purchase the subject parcel of land described above, that the land was purchased by way of a mortgage taken on the property with the Antigua and Barbuda Development Bank. She admitted that the mortgage was taken by the husband alone at his insistence as he alone was capable of qualifying for the loan based on his salary.¹
- [5] The Claimant/Wife (Mrs. Philip) insists that the land was registered in her husband name alone a fact she only became aware of since the breakdown of the marriage. Further, says the Claimant (Mrs. Philip) she, at the time, understood between the Defendant and herself that the parcel of land would be **their** land upon which **they** would build **their** matrimonial home.
- [6] Construction of a two bedroom wooden house commenced in or around 1980 and was completed in 1981. The parties moved into the house in 1981/2 and remained there until 2003.
- [7] During the period of construction the Defendant (Mr. Philip), a Customs Officer, was earning in the vicinity of \$1500/mth of which he gave to his wife (Mrs. Philip) \$300/mth for many expenses the ambit of which is somewhat in dispute. Suffice it to say Mr. Phillip says that it included a wider range of expenses than that which the Mrs. Philip claims it was for. The Defendant (Mr. Philip) maintains that he paid all bills and household expenses and the \$300 was for the Claimant (Mrs. Philip) to *“put to her own use and that of the children.”*

¹ See paragraph 6 of Affidavit in Support of Claim Form

- [8] The Defendant (Mr. Philip) insists that his wife did not contribute anything to the construction of the building or purchase of the land and that in any event she could not do so because she was not working. He denies that the Claimant (Mrs. Philip) worked with the Hadeeds as she alleged or did babysitting for an income or work at the pre-school for an income. He said, simply, that the Defendant (Mrs. Philip) refused to work. He did concede later that she might have worked for an income at the pre-school but that in any event made no contribution to the household from it.
- [9] The Claimant (Mrs. Philip) said that she did work. She worked prior to the marriage and then on two separate occasions for the Hadeeds; from 1976-1980 and from 1982 after she had her daughter, for two (2) years more. Further, she said, she worked for over \$300/wk for the Hadeeds. The Claimant (Mrs. Philip) admitted that she ceased working out in 1986 (until 2001), but that she did so at the insistence of her husband.¹
- [10] The Defendant's evidence is that the land cost him about \$4,000.00 and that in 1970 some three (3) years before meeting the Claimant (Mrs. Philip), he purchased the land from CHAPA paying a down payment of some \$700.00 at the time and that due to a mix-up as to the purchase price and some time to reconcile the mix-up, the final sum of \$4000 – was paid off for the land in 1990. The Defendant (Mr. Philip) provides documentary evidence of that pay-off in the form of a Royal Bank of Canada Purchasers Bank Draft receipt for the sum of \$4,439.00 payable to CHAPA, the vendor.
- [11] The Defendant (Mr. Philip) admitted, but only in cross-examination, that he did take out a loan of \$18,000.00 but it was to build the house, not purchase the land .He said that his wife never negotiated nor executed the agreement for the loan. The Claimant (Mrs. Philip) however, insists that they discussed the loan and that she went with him to the Bank, the identity of which she cannot remember at this time.
- [12] The Defendant (Mr. Philip) said that he paid for the land over time. "I had been making installments since 1970 little by little" and finally the lump sum of \$4,000.00. The Claimant

¹ *"It is my husband that stop me from work in 1986."*

- (Mrs. Philip) concedes that she was not involved in the negotiations for the purchase of the land. *"It is true he negotiated for the said land since 1970 before we had contemplated marriage."* The Defendant (Mr. Philip) pointed out however, that they never formed a relationship until 1973.
- [13] The Claimant (Mrs. Philip) acknowledged that the Defendant (Mr. Philip) was making payment for the land. *"I would say it is true he was making payment toward the house since 1970 ..."*
- [14] Mrs. Philip maintains that the construction of the matrimonial home was financed by their joint earnings, that she used her own earnings during the period that she worked together with assistance from family to meet the short fall in the Defendant's contribution to pay all the "outgoings" of the house which the Defendant (Mr. Philip) regularly defaulted on and to contribute directly to the mortgage repayment upon the Defendant's request from time to time. The authorities establish , however, that occasional payments made even towards the mortgage installments some time after the original acquisition do not have sufficient nexus with the 'purchase' to qualify as a contribution to the purchase price. (Mc Kenzie v Mc Kenzie [2003] EWHC 601 (Ch) at [77]).
- [15] She said that in or about 2001 she worked as a part-time cleaner earning approximately \$180/wk and from 2002 to 2005 she worked as a teacher at a pre-school earning approximately \$200/wk, an income less than what she worked for in the 1970's and 1980's.
- [16] The Claimant (Mrs. Philip) says that in 2001 the Defendant (Mr. Philip) sister made a gift of \$25,000 to them both to refurbish their matrimonial home. Hence the Defendant (Mr. Philip) applied to build a foundation for a new matrimonial home for them. The new home has not been built. The Defendant (Mr. Philip) denies that the gift was for both of them and contends that the Claimant (Mrs. Philip) only got to know of the receipt of the gift to him after he told her about it.

[17] The Claimant (Mrs. Philip) insists that it was the joint earnings of the Defendant (Mr. Philip) and herself which were used to repay the mortgage on the said parcel of land and to finance the construction of the matrimonial home.

[18] But the Defendant (Mr. Philip) contends that the last job the Claimant (Mrs. Philip) had was in or around 1976 and that was before they got married. However, he admits he “*did not push her to go and work as she stayed home and looked after the children*”. Further, he contends, that between 2001 and 2004, if she did work for an income she did not make any financial contribution to the marriage.

The Matrimonial Home - Law

[19] This claim is under the Married Women’s Property Act a law that dates back to 1887. There is no modern statute applicable here in Antigua that amends or otherwise impacts on this statute in a manner relevant to this case. According to Baroness Hale of Richmond, in the Privy Council case out of Antigua (P.C. Appeal #142/05) *Lynn Anne Abbott v Dane N. L. Abbott* at paragraph 2) “*unlike some other Caribbean countries, Antigua and Barbuda have no equivalent of the wide powers of property adjustment enjoyed by divorce courts in the U.K. Property disputes have therefore to be resolved according to the ordinary law.*”

[20] The law on the Married Women’s Property Act is set out in cases of *Pettitt v Pettitt* [1969] 2 AER 385 and *Gissing v Gissing* [1979] 2 All ER 780 HL and continued to be developed in *Lloyds Bank plc v Rosset* [1991] 1 AC 107 and *Stack v Dowden* [2007] UKHL 17, [2007] 2WLR 831.

[21] The applicable law in this matter before the Court has not changed much. The rights of the parties in these circumstances are defined by the concepts of Resulting Trust and Constructive Trust¹. The fundamental question to both trust concepts though, is “*whether,*

¹ The Privy Council in the *Abbot* case at para. 4 has expressed that the “Constructive Trust is generally the more appropriate tool of analysis in most matrimonial cases”

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” (Baroness Hale of Richmond in Privy Council Appeal #142 of 2005 *Lynn Anne Abbott v Dane N. I. Abbott* at para. 3 of the Judgment quoting Lord Bridge of Harwich in *Rosset’s* case [1991] 1 AC 107, at 132-3).

[22] The Resulting Trust is created by payment or a part payment of the purchase price. By operation of Law the resulting trust arises in favour of the party who has provided money for that purchase. It gives effect to the presumed intentions of the parties at the date of the acquisition of the property. To put it another way: *“The time at which the beneficial interest ‘crystallizes’ under the resulting trust is the date of acquisition”* (Elements of Land Law, by Kevin Gray pp 246 (b); London Butterworth’s 1987). However, conduct of the parties subsequent to the acquisition date may be used as a basis for retrospective inference as to the party’s actual intention on the date of acquisition. (Elements of Land Law, ante, see also Judgment of Browne-Wilkinson L.J in *Grant v Edwards* [1986] Ch. 638 (655)) (but see footnote to para. 21 above).

[23] The facts of this case do not support a resulting trust or any allegation on the part of the Claimant (Mrs. Philip) that she contributed at all to the purchase price of the land at the time of its acquisition. It was, on the evidence, accepted by the Court that the land was negotiated for and purchased prior to marriage albeit that final payments were paid after marriage.

[24] The allegation in the pleadings of the Claimant (Mrs. Philip) that they *“decided to purchase the parcel of land ...”* remained a ‘bald’ statement to the end, never being elevated by the evidence – independent evidence – beyond a mere bald assertion. In fact, the Defendant (Mr. Philip) maintained he purchased the property in 1970; which was transferred to him right away; and that he first got involved with the Claimant (Mrs. Philip) in 1973, marrying

her in 1980. I draw no inferences in relation to this acquisition in support of a 'common intention' that Mrs. Phillip was to acquire an interest in the land.

[25] In fact, the Claimant (Mrs. Philip) had neither asserted initially, nor in the final analysis proved, that she made a direct financial contribution to the purchase price of the land at the time of its acquisition. She did in cross-examination state that she contributed to the purchase of the land by working and later, that she "...gave my husband cash contributions to finance the purchase of the land." I take this to refer to contributions to the periodic land payments referred to by the Defendant. I do not accept her evidence on this.

[26] The lands were conveyed into the sole name of the Defendant (Mr. Philip). The balance of the purchase price was paid out of the Defendants monies. I find that the Claimant (Mrs. Philip) made no direct contributions as contemplated by the law neither to the initial deposit nor to the installments or final lump sum payment for the land¹. In any event the evidence of Mrs. Phillip that she contributed (no quantification was provided or even attempted) to the Mortgage payment upon Mr. Phillip's request does not support a contribution sufficiently significant to give her a share in the property.

[27] There was no joint account held by the parties in this matter. The evidence by both parties does not suggest a joint dynamic between the parties with respect to their finances during the course of the marriage either. This is not surprising when one considers the evidence of the Claimant (Mrs. Philip) that their relationship began, to breakdown very early in the marriage due to physical abuse² and certainly had broken down by the year 2000. Mrs. Phillip did not deny this allegation and it remains uncontroverted.

[28] I turn now to the financing of the construction of the house which involved a cash component and a loan of \$18,000.00. The Claimant (Mrs. Philip) alleges that "*the construction of our matrimonial home was financed by our joint earnings.*"

¹ The Claimant gave her reasons in her Affidavit in support of her Claim why her name was not included on the Land Title.

² See para. 12 of the Affidavit in Support of the Fixed Date Claim Form

- [29] There is some dispute over the earnings of the Claimant (Mrs. Philip). The Defendant (Mr. Philip) alleges that the Claimant (Mrs. Philip) did not work throughout the marriage far less to have made any financial contribution to the acquisition of the land or the construction of the house and payment of the mortgage.
- [30] The Claimant (Mrs. Philip) gave evidence of working “*prior to and during our marriage...*” as a sales clerk for \$300/wk, ceasing at the insistence of the Defendant (Mr. Philip) in 1986.
- [31] In fact in cross-examination the Claimant (Mrs. Philip) said that between 1976 -1980 she worked for the Hadeeds and in 1980 she was working for \$300/wk. If this was her income from 1976 her total income would have been \$1200/mth x 48 mths = \$57,600.00. But, I must take judicial notice of wage rates for a sales person today at approximately the same. It is unlikely that her wage could have been \$300/wk in 1976 or 1980 for that matter. A calculation of her earnings from 1980-1986¹ when she said she stopped working at her husband’s insistence, put her earnings for this period at \$86,400.00.
- [32] The Defendant (Mr. Philip) insists that the Claimant (Mrs. Philip) did not work until perhaps 2002², that he paid all the household expenses and bills, and further gave his wife \$300 a month to put to her own use and that of the children. In any event insists Mr. Phillips, any money Mrs. Phillips worked for towards the end of the relationship was not applied to the benefit of the household. I accept this evidence.
- [33] The Claimant (Mrs. Philip) said she generated income by babysitting after 1986. No evidence of quantum was given, nor was there any evidence of how often she did this and the nature of the venture generally. I do not accept this evidence as credible and in any event it does not assist the Court in quantifying her claimed contribution.

¹ Paragraph 10 of the Claimant Affidavit in Support /Evidence in Chief states that she ceased working in 1986. Her evidence in cross-examination is that she was working “... for Mr. Hadeed until approximately 1984.”

² See Defendant Affidavit in Reply to Fixed Date Claim Form para. 13 and 14

- [34] The Claimant (Mrs. Philip) also alleged that her family and friends helped her out financially but again provided no evidence of exactly who helped her, when, under what circumstances and to what extent. The Court had no basis for making a determination in favour of the Claimant on this allegation. Further, the evidence was of no value in assisting the Court in making an assessment of the quantum of the direct or indirect financial contribution of the Claimant (Mrs. Philip) as she alleges.
- [35] There is no dispute over the existence of a gift of the sum of \$25,000.00 from the Defendant's sister. However the Defendant (Mr. Philip) says that the gift was to him only and not them both as alleged by the Claimant (Mrs. Philip). The Claimant (Mrs. Philip) gave no sufficient evidence of how she arrived at the position that the gift was for them both. The Defendant (Mr. Philip) alleged that the money was given to him, he had discussions with his sister and later, after receipt of the money, he had sometime told the Claimant (Mrs. Philip) about it. On a balance of probabilities I accept the evidence of the Defendant (Mr. Philip) in this regard as more plausible in the circumstances. If perhaps the gift was from the Defendant's mother - a person who traditionally would have a keen interest in the success of a sons union - the 'balance' may have been differently weighed.
- [36] A loan was taken for the construction of the matrimonial home. The Defendant (Mr. Philip) insists that the Claimant (Mrs. Philip) neither negotiated for nor signed the loan agreement. She however, says that it was discussed between them and that she attended the Bank with the Defendant (Mr. Philip) for the signing. In her evidence she admitted that she could not recall the name of the Bank from which the mortgage was obtained. The Claimant (Mrs. Philip) presumably relied on this evidence to buttress her assertion that that the financing and construction of the home was a joint enterprise. I reject her evidence. Her attendance with the Defendant (Mr. Philip) to the bank is information which would be useful to her case and if she, with the benefit of preparation could not recall the name or location of the Bank, I am not prepared to accept her evidence on this point. In any event in the circumstances of this case I do not find that her actions here lend itself to the establishment or furtherance of the "Common Intention".

- [37] It is not disputed that Mr. Phillip alone entered into the \$18,000.00 loan agreement. Significantly, at no time in her pleadings or testimony before the court did Mrs. Phillip indicate what was the cost of construction, what were the periodic payments made by Mr. Phillip toward the land or the Bank loan. She, in my view, simply did not have a clue.
- [38] The Claimant (Mrs. Philip) contradicted herself with respect to her contribution to the purchase of the land when in cross-examination she said: "*I contributed to the repayment of the land by working. I did not put in anything on the land at the time.*" But later in cross-examination she said: "*Yes I gave my husband cash contribution to finance the purchase of the land.*" In para. 13 of the Claimant Affidavit in Support/Evidence in Chief, she says that she and her husband's joint earnings were used to repay the mortgage on the parcel of **land**.
- [39] The land, I accept, was not purchased by way of a mortgage/loan but by way of direct financial outlay by the Defendant (Mr. Philip). That is my finding.
- [40] Be that as it may, whatever the direct financial outlay that the Claimant (Mrs. Philip) may prove in relation to the construction, I accept as the applicable law, that the payments must be referable to a conscious or subjective belief on the part of the Claimant (Mrs. Philip) that she thereby was acquiring a beneficial interest in the property concerned and not merely making a contribution toward current living expenses and outgoings. I do not accept that any monies that may have come into the hands of Mrs. Phillip from time to time and applied to any of the households current living expenses and outgoings were intended by her to acquire for her, an interest in the matrimonial home.
- [41] I am satisfied on the evidence that the Claimant (Mrs. Philip) made no direct financial contribution to the acquisition of neither land nor building. I am satisfied that the Defendant (Mr. Philip) could have met the financial commitment for either the land or house on his own as submitted by counsel for the Defendant (The Claimant has also not contended otherwise). Both parties have been very frugal with evidence with respect to quantities and values preferring instead to make general amorphous statements about

financial matters which are readily capable of quantification. The burden rests with the Claimant (Mrs. Philip) to prove her case, albeit on a balance of probabilities. In all the circumstances I cannot accept her mere bald assertions of employment and earnings in a case where that evidence is the very basis of her claim and is disputed and in instances controverted.

[42] The high water mark, as it were, of the Claimant's case in support of her 'contribution' is her; (i) periodic contributions to household expenses and (ii) contributions of *domestic endeavour*. The Claimant (Mrs. Philip) was, taken at its highest, a peripheral earner in the context of a 23 year marriage. Whether she obtained her income from sporadic periods of employment or gifts from family and friends or whether she contributed to the family fortune by her intangible ("though not unquantifiable") *domestic endeavour*, she needs to show that it was the common intention on the Defendant (Mr. Phillip) and Claimant's part, that these contributions (if any) would generate for her a beneficial share in the property registered in the Defendant's name.

[43] More narrowly, a housewife that pays for or contributes toward the purchase of household food, goods and services with her own money may acquire for herself, rights in the items and services she pays for "*but such sharing of family living expenses does not in itself connote a joint contribution toward the acquisition of family property*" (*Elements of Land Law, 4th edit. by Kevin Gray pp. 257*).

[44] Further still, the same principle above applies to contributions made by the homemaker/Claimant, (Mrs. Phillip), to the welfare of the family.

[45] The Claimant (Mrs. Philip) is obliged along with the Defendant (Mr. Philip) to make provision for her children and indeed to herself. I am unable to glean from the evidence what services or goods she claimed were supplied by her can be construed as taking beyond her expected personal contribution to the family circle. I am satisfied that the Claimant's financial contribution to the acquisition of the Matrimonial Property is at best minimal to the point of being *de minimis*..

[46] I turn now to the “Common Intention” consideration and whether the minimal financial contribution and the domestic contribution of the Claimant can be applied to acquisition of a share in the property.

COMMON INTENTION

[47] Is there is an agreement between the parties at the time of the acquisition of the land or the construction of the matrimonial home or thereafter, that the Claimant (Mrs. Philip) acquires a share in the property? Whereas in **Rosset’s case** [1991] 1 AC 107 (132-3) Lord Bridge of Harwich suggested that direct contributions to the purchase price alone by the non-legal owner will readily justify the inference necessary to the creation of a Constructive Trust, the Privy Council in the Abbott case noted that the law has moved on and the *“parties whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to its ownership”*.¹

[48] What then is the parties shared intention and whole course of conduct in this matter?

[49] The Defendant is saying that his wife did not work for the 23 years of his marriage and even four years before that (since 1976 by his evidence) and that he did not push her to work as she stayed home and looked after the children (see para. 13 of his Affidavit in Reply pp. 12 of the Trial Bundle). This was his understanding at the beginning of the marriage in 1980 that she stayed home and did look after the children. I note that there was no express agreement alleged or in any event proven, that Mrs. Phillip would acquire an interest in the property held in the name of Mr. Phillip. I find on the evidence that Mrs. Phillip did not stay home at the request and/or insistence of Mr. Phillip.

[50] The Defendant (Mr. Philip) is suggesting that the Claimant (Mrs. Philip) stayed home without an independent income, further education or training and with diminishing prospects in the working world for 23 years (or from 1986 by Mrs. Phillips evidence) carrying out a function that obviously he thought had some value – certainly more value

¹ See Lord Walker of Gestingthorpe in *Stack v Dowden*[2007]UKHL 17, at para. 31; and quoted in the **Abbott** case at paras. 5 and 6.

than warranted his '*pushing*' her to re-enter the working world – without her expecting that she would receive a tangible return for her contribution? Would it be conceivable that the Claimant (Mrs. Philip) would have intended to confer this 23 year (or even 17yrs by her calculation) gratuitous benefit on the Defendant (Mr. Philip)? Can the whole of the course of conduct between the parties satisfy a retrospective inference as the actual intentions of the parties at the date of acquisition in favor of Mrs. Phillip's contention?

The whole of the course of conduct

- [51] The parties were married for 23 years, the Land was **purchased** in 1970 before the parties were 'involved' and some 10 years **prior to marriage**, the Defendant (Mr. Philip) entered into a loan agreement **alone** to build the matrimonial home and the parties moved into the constructed house in 1982 some two years after marriage. The parties had no joint account as savings. The Defendant (Mr. Philip) was employed as a Customs Officer throughout the period, they had two children, according to the Defendant (Mr. Philip) the Claimant (Mrs. Philip) never worked for the period but stayed home and took care of the children, and taking even, Mrs. Phillips case at its highest, the Defendant (Mr. Philip) contributed the lions share of the household and personal expenses.
- [52] Stripped of all the evidence that I have accepted in favor of Mr. Phillip, Mrs. Phillip's case in support of her contribution is substantially based on her domestic endeavour. Mr. Phillip admitted that Mrs. Phillip never worked and that she took care of the children. His evidence with respect to this fact (see para. 49 above) suggests that he understood the trade-off as it were, that Mrs. Phillip made for the benefit of the family. Was this "*trade-off*" a detriment that she was drawn into by Mr. Phillips on the understanding that she would have a share in the matrimonial property? Is this evidence of a shared intention that Mrs. Phillip would generate for herself a share in the matrimonial property? Or, is it evidence of her acting on that common intention or simply evidence of her ordinary contribution to her joint household.

[53] The authorities on the application of the now somewhat outdated Married Women's Property Act suggest that domestic endeavour by itself is not sufficient to found a claim for an interest in the matrimonial home. **Abbotts** case advances the law somewhat and points to considering the "*parties whole course of conduct in relation to the property.*" This would surely include Mrs. Phillips foregoing a regular income, financial independence, on-the-job growth and development, and the consequent loss of marketability on the job market with the passage of time and doing so with the full knowledge and acquiescence - 23yrs. by his evidence - if not insistence, of Mr. Phillip. *The search is to ascertain the parties shared intentions, actual, inferred, or imputed, with respect to the property.*

[54] In the context of the English speaking Caribbean society including Antigua and Barbuda where there is no sufficient national pension scheme for non-contributors, no public housing program to house all the needy aged and infirm, and a socio-economic and cultural reality that permits vagrancy, hardship and destitution, would Mrs. Phillip remained at home without expecting to at least somehow carve out for herself a sufficient share in the home so as to ensure a roof over her head later in life. Lord Diplock at para. 413 in **Pettitt v Pettitt** in considering the techniques applied in imputing an intention to a person, at para 413 said; "But the most likely inference as to a person's intention in the transactions of his everyday life depends on the social environment in which he lives and the common habits of thought of those who live in it.". It would not come as a surprise to anyone in our social and cultural context that Mrs. Phillip would endeavour to carve out if not otherwise expect, a share in the matrimonial property. But neither would it come as a surprise that she was merely doing her 'bit' without an expectation that she would secure any thing more than love and affection from her children and/or husband.

[55] The question however, is not just whether Mrs. Phillip expected such a share in the matrimonial home though and whether Mrs. Phillip acted to her detriment, but whether this expectation and act of 'detriment' was part of a common intention between her and her husband, the Defendant in this matter. Put another way, whether Mrs. Phillip staying away from the job market (for 17-23yrs.) and her taking care of the children, were induced by the 'common intention'. Mr. Phillip says there was no such common intention. Looking at the

conduct of the Mr. Phillips in purchasing and paying for the land on his own, obtaining and servicing the loan for construction of the home on his own, paying all household bills referred to in his evidence and doing so without the need for an additional income, it appears that he had no intention of parting with any interest in his property, the subject of this case. The activities relied upon by Mrs. Phillip (after the Court's findings of fact) are that of a domestic nature and do not find support for her claim in the authorities. In **Button v Button** [1968] 1 All ER at p.1067 Lord Denning MR determined that; *"The wife does not get a share in the house simply because she cleans the walls or works in the garden or helps her husband with the painting and decorating. Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interest in, the property."* In the case of **Burns v Burns** [1994] 1 All ER 244 a case not decided under the UK Matrimonial Causes Act 1973 which empowers the court to make property adjustment orders, they being unmarried. Fox LJ on the question of housekeeping, domestic duties and Common Intention had this to say; *"That common intention may be inferred where there has been a financial contribution, direct or indirect, to the acquisition of the house. But the mere fact that parties live together and do the ordinary tasks is, in my view, no indication at all that they thereby intended to alter the existing property rights of either of them."*

[56] In the present case, in my opinion, the facts do not justify the conclusion that the property was acquired by joint efforts of the parties. Mrs. Phillip has made no initial contribution to the purchase of the land, no direct contribution to the land purchase installments nor construction loan installments nor any other discernable financial contribution to other expenses of the household which it can be inferred was referable to the acquisition of the land and house, there is in the absence of evidence of an express agreement between the parties, insufficient material to justify the court in inferring that it was not just Mrs. Phillips intention/plan but the common intention of the parties that she should have any beneficial interest in the matrimonial home .

[57] In the circumstances the Claimant/Mrs. Phillip regrettably has failed to discharge her burden of proof.

ORDER

[58] **IT IS HEREBY ORDERED THAT:**

- (i) Judgment for the Defendant.
- (ii) The Claimant's Claim is dismissed with cost to the Defendant.
- (iii) If not agreed within 21 days of this Order, then, Costs awarded in accordance with the prescribed cost scale of the CPR 2000 with the value of the claim fixed pursuant to Prt. 65.5(2) (iii).

DAVID C. HARRIS
JUDGE OF THE HIGH COURT
ANTIGUA & BARBUDA