

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV2006/0347

BETWEEN:

HEATHER MICHAEL

Claimant

And

ROMIG WESTERBY MICHAEL

Defendant

Appearances:

Ms. Tracy Benn for the Claimant

Mr. Dane Hamilton Sr. QC for the Defendant with him is Mr. Dane Ramon Hamilton Jnr.

.....
2008: January 23rd

June 18th
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JUDGEMENT

[1] **BLENMAN, J:** This is a claim for division of property between two former spouses.

[2] **Background**

Mrs. Heather Michael (Mrs. Michael) and Mr. Romig Westerby Michael (Mr. Michael) were married in 1964 and their marriage lasted for approximately 42 years. Their union produced two children.

- [3] For approximately 16 years of their marriage, they lived together as a family in Antigua and Barbuda before Mrs. Michael was forced to migrate to Florida with the children. The relationship between the Michaels continued until they were divorced on 30th July, 2007.
- [4] Mrs. Michael filed a claim against Mr. Michael and she contends that she and her husband acquired three parcels of land in Antigua during their marriage. She says that, even though the lands are all registered in Mr. Michael's sole name, she is entitled to a half share or to such share as the court deems just and reasonable. The properties are as follows:
- (i) Registration Section: Cassada Gardens & New Winthropes Block # 42 1893B Parcel# 297 (Parcel 297)
 - (ii) Registration Section: Cassada Gardens & New Winthropes, Block # 42 1893B Parcel# 298 (Parcel298)
 - (iii) Registration Section: Mc Kinnons, Block # 45 1696B Parcel # 328 (Parcel 328)
- [5] Mrs. Michael further seeks an order for the sale of the properties with either party having the option to buy out the other's interest in the properties.
- [6] She also alleges that Mr. Michael has rented the properties situated on Parcels 297 and Parcel 298 respectively and has collected the rents which he has utilized for his sole use.
- [7] She also seeks an account from Mr. Michael of the income that he has obtained from the rental of the properties situated at Cassada Gardens, together with damages, interest and cost.
- [8] Affidavits were filed by both parties and each of the parties was cross examined on the affidavit. In his affidavit in answer, Mr. Michael conceded that Parcel 297 is owned jointly with Mrs. Michael. This is the parcel of land on which the matrimonial home is situated but maintains that she has no interest nor is she entitled to any share or interest in Parcel 298 or Parcel 328. He is adamant that he purchased both Parcel 298 and Parcel 328 from his sole money that he earned from his then employment and that he is the sole legal and beneficial owner of both of the properties.

[9] Mr. Michael insists that prior to purchasing the latter two properties he had no discussion with Mrs. Michael and it was never his intention that she should have a share or interest in them. In fact, he informed her of his acquisitions after the fact. Parcel 328 at the time of its acquisition had a fully furnished two bedroom house erected on it to which he added another bedroom at his sole expense.

[10] He further says that he provided financially for Mrs. Michael and their children during the marriage. Having borrowed money from Barclays Bank, Mr. Michael further asserts that during their marriage, he had purchased a property in Florida in which the claimant lived with the children of the family. He would visit Mrs. Michael and the children regularly in Florida and he would stay in the same house. They took out a mortgage and Mrs. Michael paid the installments. In addition, from time to time, he sent remittances to Mrs. Michael to assist with the living expenses of her and the children.

[11] He says that he purchased a plywood home and placed it on Parcel 298. It was his intention to utilize the property for the purpose of his sole investment since he is no longer employed. In view of the above, Mr. Michael denies that Mrs. Michael is entitled to any share or interest either in Parcels 298 or Parcel 328.

[12] Mrs. Michael admits that she has made no financial contribution to the acquisition of either Parcel 298 or Parcel 328 but she maintains that she and her husband acquired both parcels of land after there were extensive discussions. These properties were both acquired after agreement between both parties and she was of the view that both properties belonged to them. She says that she made several contributions to the acquisition of the items that were placed in both properties and is of the view that the common intention was for both of them to beneficially own the properties jointly and she states that she has acted to her detriment based on the common intention.

[13] **Issues**

The issues that arise for the court's determination are as follows:

- (a) What share or interest is Mrs. Michael entitled to in Parcel 297.
- (b) Whether Mrs. Michael is entitled to any interest or share in Parcel 298 and Parcel 328.
- (c) Whether Mrs. Michael is entitled to a declaration that Mr. Michael accounts for the rentals that he has received in relation to Parcel 297 and Parcel 298 respectively.

[14] **Evidence**

Mrs. Michael filed an affidavit, together with exhibits, in support of her claim. In her affidavit, she deposed to several matters in order to ground her claim for an interest or share in both Parcel 298 and Parcel 328. Mr. Michael filed an affidavit in answer, together with exhibits, in which he disputes several of the factual contentions asserted by Mrs. Michael in relation to the acquisition of both Parcel 298 and Parcel 328 and her contention that she is entitled to a share or interest in both properties. He admits however, that Parcel 297 is owned by them jointly. Mrs. Michael has deposed to an affidavit in reply. Both of the parties were cross examined at length.

[15] **Mr. Dane Hamilton Q.C.'s submissions**

Parcel 298

Learned Queen's Counsel, Mr. Hamilton strenuously urged the court to reject Mrs. Michael's evidence and instead accept the evidence of Mr. Michael. Mr. Hamilton said that Mrs. Michael's evidence indicates that she was totally unaware as to the date or circumstance in which her husband acquired Parcel 298. Her evidence was vague and she was incapable of furnishing the court with any specific details.

[16] Queen's Counsel Mr. Hamilton said that while Mr. Michael conceded to having told his wife about the purchase of Parcel 298, while he was on a visit to Florida, the evidence falls far short from establishing any agreement or arrangement with her to share the beneficial interest in the property. The uncontroverted evidence is that Mrs. Michael contributed no funds to the acquisition of Parcel 298, which was completed in 1996. Learned Queen's Counsel advocated that Mr. Michael used his sole monies to purchase Parcel 298 and later to purchase the house that was placed on the land and to improve it.

[17] **Parcel 328**

Similarly, in relation to Parcel 328 and the property thereon, Mr. Hamilton QC asked the court to reject Mrs. Michael's evidence that her husband discussed the impending purchase of the property with her. He urged the court to accept Mr. Michael's evidence that he never had any discussions with Mrs. Michael until a long while after he had purchased the property utilizing his sole funds. The parties held discussions in Florida when Mr. Michael paid Mrs. Michael a visit and that she had made no enquiries of him in relation to the acquisition.

[18] In support of his argument that Mrs. Michael is not entitled to any share or interest in Parcel 328, Mr. Hamilton QC adverted the court's attention to Mr. Michael's evidence that the cost of the property situated at Parcel 328 was \$327,500 plus \$8,000 (legal costs and stamp duty) and \$93,000 for renovation expenses. The total amount being \$428,500.

[19] Mr. Hamilton QC urged the court to find that Mrs. Michael's evidence is unreliable. He said that in her first affidavit, she said that they discussed the purchase, but when Mr. Michael in his affidavit in answer disputed this, it was only then that Mrs. Michael sought to set up a different basis for her interest in the property. Queens Counsel said that both accounts cannot be correct; it is either that Mr. Michael told Mrs. Michael about the intended purchase before it was bought or after it was bought; both accounts cannot be true.

[20] Further, Queens Counsel Mr. Hamilton posited that the court should reject Mrs. Michael's evidence that she contributed financially to the upkeep of the property after its acquisition, as untrue. Mr. Hamilton QC said that while it may be true Mrs. Michael sent an unsolicited dining room set to Mr. Michael and on her visit to Antigua brought sheets and towels, this is not indicative of any common intention that she was to have a beneficial interest in Parcel 328. He maintained that the court should accept Mr. Michael's evidence in preference to that of his former wife and find that Parcel 328 was purchased by Mr. Michael in 1992 for his sole use and occupation. He asked the court to pay regard to the fact that between 2001 and 2004 whenever Mrs. Michael visited Antigua she stayed at her

father's home. Learned Queen's Counsel further said that the items that Mrs. Michael purchased were furnishings and not fittings and in any event were not referable to the acquisition of the property since they were bought long after Mr. Michael had purchased Parcel 328 and renovated the home thereon at his sole expense.

[21] Learned Queens Counsel Mr. Hamilton therefore argued that the evidence adduced by Mrs. Michael fell far short of that required to support her contention that she shared a common intention with Mr. Michael to a share or interest in the property situated at Parcel 328. Further, there is no reliable evidence to support her allegations that she acted to her detriment based on the shared common intention.

[22] In support of his arguments, Mr. Hamilton QC relied on the cases of **Petitt v Petitt [1969] 2 All E R 385; Gissing v Gissing [1970] 2 All E R 780; Burns v Burns [1984] 1 All E R 244 and Grant v Edwards [1986] 2 All E R 426**

[23] Mr. Hamilton QC said that Mrs. Michael could only properly claim an entitlement to a half share or interest in the property in one of the following legal circumstances:

- (a) By express declaration or agreement;
- (b) By way of resulting trust or constructive trust if she proves that she has provided part of the purchase price;
- (c) Common intention of the parties.

[24] Mr. Hamilton QC maintained that based on the evidence before the court there was no express declaration or agreement between the parties in relation to Parcel 298 or Parcel 328. Neither has Mrs. Michael adduced any evidence to support the creation of a resulting trust in her favour, since she has admitted that she had not provided any part of the purchase price. Accordingly, her claim fails under that head.

[25] Learned Queens Counsel Mr. Hamilton submitted that the only issue that is left to be addressed is whether Mrs. Michael can properly bring her claim under the "common intention" limb in order to create a constructive trust situation in her favour. Mr. Hamilton QC said that the requisite intention ought to exist at the date of the acquisition of the property in order to properly bring the claim within that limb. However, taking into account

all of the circumstances of the case, including that Mrs. Michael has provided no money towards the purchase of the property, there is no evidence from which the intention to confer an equitable interest on Mrs. Michael could be inferred. Further, Mr. Hamilton QC argued that there is no evidence before the court on which the court could properly conclude that Mr. Michael did or said anything to Mrs. Michael which caused her to change her position to her detriment in the belief that she would have an interest either in Parcel 298 or Parcel 328. Voluntary expenditure by Mrs. Michael on household items such as furnishings, does not indicate the existence of a common intention especially taken in the light of Mr. Michael's sole occupation of the house at Parcel 328 for approximately 12 (twelve) years. The fact that Mrs. Michael joined her husband in 2004 and has since lived with him in the house at Parcel 328 and thereby providing him with "housewifely" services is insufficient to infer a common intention to confer a beneficial interest in Mrs. Michael; neither is there any evidence to show that she has acted to her detriment.

[26] Learned Queen's Counsel referred to the pronouncement of **Lord Diplock in Gissing v Gissing** when he said as follows:

"Where the wife has made no initial contribution to the cash deposit and the legal charges and no direct contribution to the mortgage installments nor any adjustment to her contribution to other expenses of the household which it can be inferred was referable to the acquisition of the house, there is in absence of evidence of an express agreement between the parties, no material to justify the court in inferring that it was the common intention of the parties that she should have any beneficial interest in the matrimonial home conveyed into the sole name of the husband, merely because she continued to contribute out of her own earnings on private income to other expenses of the household. For such conduct is no less consistent with a common intention to share the day to day expenses of the household, while each spouse retains a separate interest in capital assets acquired with their own moneys or obtained by inheritance or gift. There is nothing here to rebut the prima facie inference that the purchaser of the land who pays the purchase price and takes a conveyance..... in his own name intends to acquire the sole beneficial interest as well as the legal estate."

[27] Arguing that Mrs. Michael's claim should be dismissed together with cost, Mr. Hamilton Q.C. stated that based on the evidence adduced and the relevant legal principles to rebut the prima facie inference it is clear that Mr. Michael intended to acquire both Parcel 298 and Parcel 328 and to obtain both the beneficial and legal interests in both properties.

[28] **Ms. Tracy Benn's Submissions**

Parcel 298

Learned counsel Ms. Tracy Benn submitted that the court should accept Mrs. Michael's evidence in preference to that of Mr. Michael. Ms. Benn learned Counsel urged the court to find in relation to Parcel 298 that Mr. Michael purchased that property utilizing money from the couple's joint account together with the bonus that he obtained from his place of employment. It was the common intention and agreement between the parties, argued Ms. Benn that Parcel 298 was to have been owned jointly even though she sent no money to Mr. Michael or made no contributions towards its acquisition. Ms. Benn asked the court to reject Mr. Michael's evidence as unreliable.

[29] **Parcel 328**

Next, learned Counsel Ms. Benn submitted that Mrs. Michael's evidence should be accepted by the court in preference to that of Mr. Michael. Ms. Benn asked the court to reject Mr. Michael's evidence that he never discussed the acquisition of Parcel 328 with his then wife and rather that the decision to purchase the property was his exclusively. Counsel asked the court to find that Mrs. Michael spoke the truth when she said that he told her about the impending purchase by both parties and that Mr. Michael had told her that he would use monies that he had here (in Antigua) and that she did not have to send any money to him. Ms. Benn asked the court to accept that Mrs. Michael was at all times aware of the acquisition of the property and they had a common intention that she would have a beneficial share in the property.

[30] In support of their common intention, in relation to the beneficial interest in the property, learned Counsel Ms. Benn urged the court to pay particular regard to Mrs. Michael's evidence and to accept it as true that when Mr. Michael visited her in Florida, he complained about his dislike of the furniture in the property situated at Parcel 328, and that he identified pieces of furniture from their home, which she had bought with her sole monies and which they agreed would "go well" with the property at Parcel 328. Mrs. Michael, based on the agreement she had with her husband, sent the furniture to him. In

addition, Mrs. Michael purchased other substantial furnishings with her own money and shipped them to the house situated on Parcel 328. Mrs. Michael contributed financially to the upkeep of the house and when she was in Antigua she contributed significant time, money and energy in furnishing and maintaining the house situated at Parcel 328 (which was now treated as their matrimonial home in Antigua). Ms. Benn insisted that Mr. Michael led Mrs. Michael to believe that she had a share in the property situated at Parcel 328 and that she has relied on that fact and acted to her detriment.

[31] Learned counsel Ms. Benn adverted the court's attention to Mr. Michael's admission under cross examination that he has never told Mrs. Michael that she had no share or interest in the property; neither did he prevent her from furnishing the house. Ms. Benn asked the court to reject Mr. Michael's evidence that he never asked Mrs. Michael to ship the furniture and appliances to the property. Counsel maintained that the evidence shows that Mr. Michael led his former wife to believe that the property belonged to them jointly or at the very least that she had some sort of interest or share in it at the time of the acquisition and thereafter; that he allowed her to labour under the impression and encouraged her to act to her detriment.

[32] In support of her argument, Ms. Benn pointed to the fact that both Parcel 298 and Parcel 328 were acquired during the time when the Michael's enjoyed a very harmonious relationship and they communicated by telephone regularly every Sunday while Mrs. Michael resided in Florida. The parties also took turn to visit each other during the good times of the relationship; they acted in unison and Mrs. Michael made several indirect contributions towards their acquisition of both properties. Learned counsel emphasized that all of the properties in issue were acquired during the good times of the relationship. While the parties' relationship was strained during the period 2001 to 2004, all of the properties that form the subject matter of this claim were acquired long before the breakdown of their marriage.

[33] In any event, it was Mr. Michael who not only invited Mrs. Michael to return to Antigua but further, he went to Florida in 2004 and assisted her return to Antigua. Mrs. Michael

complied with his request and has been living in the home situated on Parcel 328 from her return to the present date treating it as their family home. Initially, the agreement was for Mr. Michael to join his wife in Florida but this did not materialize. Counsel said that in any event, it is not in dispute that the agreement between the parties was that on Mrs. Michael's retirement from her employment in Florida she would return to their common property here in Antigua.

[34] In support of her argument that Mrs. Michael is entitled to a share or interest in the property, Ms. Benn referred the court to **Petitt v Petitt [1969] 2 All E R 385; Eves v Eves [1975]; Gissing v Gissing [1970] 2 All E R 780; Grant v Edwards [1986] 2 All E R 426**. The above cases are authority for the principle that either a resulting, implied or constructive trust is created by the party who has the property registered in his/her name in favour of the other party when by his/her conduct or words he/she has induced that other party to act to his/her detriment in the reasonable belief that that other party has acquired a beneficial interest in the property.

[35] Also, Ms. Benn referred the court to **Grant v Edwards [1986]. Sir Nicholas Browne Wilson VC** stated at page 654 as follows:

“If the legal estate in the joint home 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 the sole beneficial ownership. This requires two matters to be demonstrated: (a) that there was a common intention that both should acquire a beneficial interest; and (b) that the claimant has acted to his or her detriment on the basis of that common intention”.

[36] Therefore, learned counsel Ms. Benn argued that in order to establish an implied or constructive trust exists in favour of Mrs. Michael two elements must be present, namely: evidence of common intention, and detrimental reliance by Mrs. Michael. If as is the case, Mrs. Michael is able to establish the two elements stated herein, then equity will not allow Mr. Michael to deny that Mrs. Michael is entitled to an interest or share in the property. Ms.

Benn also referred the court to **Abbott v Abbott Privy Council Decision No. 142 of 2005**.

[37] In the case at bar, Ms. Benn submitted that Mrs. Michael is entitled to a half share or interest in each of the properties and that the court should so declare. Further, she implored the court to order that the properties situated at Parcel 298 and Parcel 328 respectively be valued by an agreed valuator and that either party be permitted to purchase the other's share or interest in each of the two properties.

[38] **Account for rentals**

Next, learned Counsel Ms. Benn submitted that based on Mr. Michael's own admission that he rented the property (Parcel 297) which was the former matrimonial home and the property situated on Parcel 298 and that he has retained the rentals for his personal use, he should account at least for the portion of rents which is reflective of Mrs. Michael's interest in Parcel 297 and Parcel 298.

[39] Ms. Benn, therefore, urged the court to make an order that Mr. Michael accounts for the rents that he obtained from the rental of both of the properties situated on Parcel 297 and Parcel 298, the latter being rented for EC \$1000.00 at present.

[40] **Court analyses and findings**

I have carefully reviewed the evidence adduced by Mrs. Michael and that of Mr. Michael; and have given very deliberate consideration to the very lucid submissions of learned counsel.

[41] The following represents my findings and analyses:

Mr. and Mrs. Michael having married were together as husband and wife for in excess of 42 (forty two) years had a very harmonious relationship. She was a nurse by profession and he worked in several business entities, first as a clerk and then in several senior positions. Mrs. Michael was forced to migrate to Florida with the children of the marriage due to Mr. Michael's affiliations which resulted in Mrs. Michael experiencing difficulties at her place of work. They agreed that Mr. Michael would follow, but this never occurred.

[42] Before leaving for Florida, they purchased Parcel 297 using their joint moneys but the property was registered in Mr. Michael's sole name. Together they built a home on the property but did not occupy it initially. In fact, they rented it in order to earn some much needed money to pay off a loan which was used to construct the home on Parcel 297. I am satisfied that Mrs. Michael habitually gave Mr. Michael her pay check and that together they conducted their business affairs as a team. Subsequently, they furnished the property situated on Parcel 297 and inhabited it for approximately ten years, sharing all of the related expenses.

[43] Several years later Mrs. Michael moved to Florida expecting her husband to join her, but he never did. The parties visited each other, and spent time together, during the years of their marriage, when Mrs. Michael lived in Florida with their children. Eventually, Mr. and Mrs. Michael agreed to rent Parcel 297 in the hope of earning some more money and improve their financial circumstances, I have no doubt that they agreed to save the money earned from the rental. I am satisfied that the money obtained from the rental was meant to be used by them both. There is no dispute in relation to the property situated on Parcel 297 since it is agreed between the parties that it is owned jointly.

[44] I digress to state that Mr. and Mrs. Michael eventually bought a home in Florida with the deposit monies coming from a loan Mr. Michael had obtained while Mrs. Michael paid the mortgage installments. There is no dispute in relation to the Florida property which is jointly owned and is not the subject matter of this claim. Also, he assisted in the maintenance of Mrs. Michael and their children while they lived in Florida and sent them remittances.

[45] **Parcel 298**

I come now to specifically address Parcel 298. This lot adjoins Parcel 297 and I have no doubt that Mr. and Mrs. Michael discussed the acquisition of it, I do not believe Mr. Michael when he said that he had no consultation with Mrs. Michael in relation to the purchase of the property. However, I do believe Mr. Michael when he said that he made no promise to her that Parcel 298 was obtained for their joint benefit. Indeed on the evidence adduced, I

am unable to find any express agreement between the parties that Parcel 298 would have been owned jointly by the parties. There is no dispute that it is registered in Mr. Michael's sole name.

[46] I am also of the respectful view that Mr. Michael was able to use some of the proceeds obtained from renting their matrimonial home in order to purchase Parcel 298 and accept Mrs. Michael's evidence when she said that she was led to believe that the rents obtained from Parcel 297 together with other sums were used to purchase Parcel 298. This in no way negates the fact that I am satisfied that Mr. Michael utilized a lot of thrift and his own money in order to contribute to the acquisition of Parcel 298 and subsequently construct a house thereon. I have no doubt that Mr. Michael also sold some of the furnishings that belonged to himself and Mrs. Michael and kept the proceeds for himself. Nothing is unusual about this since at the time they shared a good relationship.

[47] Based on the totality of evidence, and the whole course of conduct of the parties, I am satisfied that it was the common intention of the parties by way of inference that Mr. and Mrs. Michael would own Parcel 298 together. At the time of the acquisition of Parcel 298 and subsequent purchase of the house, which was placed on Parcel 298, the parties had a great relationship and acted as a cohesive union. In coming to this conclusion, I have utilized the principles as enunciated in **Abbott v Abbott** *ibid*. However, I am mindful of the fact that in **Lloyds Bank PLC v Rosset et al [1990] 1All ER**, the Court of Appeal held that

“in resolving a dispute between two persons who had shared a home in circumstances where one party was entitled to the legal estate and the other party claimed to be entitled to a beneficial interest... the fundamental question which had to be resolved was whether, on the basis of the evidence of express discussions between the partners and independently of any inference to be drawn from their conduct in the course of sharing the property and managing their joint affairs, there had been at any time prior to the acquisition of the property, or exceptionally at some later date, any agreement, arrangement or understanding reached between them that the property was to be shared beneficially coupled with detrimental action or alteration of position on the part of the person claiming the beneficial interest or, failing that, whether there had been direct contributions to the purchase price by the person claiming the beneficial interest from which a constructive trust can be inferred”.

[48] The law is based on the decisions of **Petitt v Petitt [1970] AC 777**; **Gissing v Gissing [1971] AC 886**; **Lloyd's Bank PLC v Rosset [1971] 1AC 107** and **Stack v Dowden [2007] UK HL17**. The development of the law continued and finally cumulated in the modern and recent case of **Abbott v Abbott Privy Council Appeal No. 142 of 2005**. The Privy Council held in this latter case made it clear that the constructive trust is generally the more appropriate tool of analysis in most matrimonial cases. Baroness Hale delivering the advice of the Board in **Abbott v Abbott** *ibid* said that “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”. Further, Baroness Hale remarked that “the law has moved on” and made the following statement:

“ If the question really is one of the parties “common intention”, we believe that there is much to be said of adopting what has been called a “holistic approach” to quantification, undertaking a survey of the whole course of dealings between the parties and taking account of all conduct which throws light on the question what shares were intended.”

[49] There are two questions that should be addressed: first, was it intended that the parties share the beneficial interest in a property conveyed to one of them only; and secondly, if it was so intended, in what proportions was it intended that they share the beneficial interest.

[50] Applying the principles enunciated in **Abbott v Abbott** *ibid*, I have no doubt that based on the totality on the circumstances that Mr. Michael discussed with Mrs. Michael the acquisition of Parcel 298. I am also of the view that while during those discussions they did, by way of inference, reach a common intention that the property was to be shared beneficially by Mrs. Michael. I am of the view that based on the whole course of conduct in relation to Parcel 298 and in this regard I accept Mrs. Michael’s evidence that together the parties held a fixed deposit account and that the monies standing in that account were drawn down by Mr. Michael to attend to the family’s financial affairs. I also have no doubt that Mr. Michael utilized his own money to a large extent to purchase the house that was placed on Parcel 298, however they shared a common intention that it was to be beneficially owned jointly. I am fortified in my view when I examine the manner in which the parties conducted their financial affairs in happier times; it is clear that they did everything as a unit intending that they would each share in their beneficial interest of Parcel 298. The

parties simply shared all of their expenses and operated as a team even though it is clear that Mrs. Michael's financial contributions, if any, to the acquisition of Parcel 298 appears to be negligible in comparison to Mr. Michael's, and it definitely was not a direct contribution to the acquisition of Parcel 298.

[51] By way of emphasis, applying the principles enunciated in **Abbott v Abbott** *ibid*, it is clear to me that from the conduct of Mr. and Mrs. Michael that there must be imputed a common intention that Mrs. Michael would share in the beneficial interest and based on this common intention Mrs. Michael acted to her detriment; examples of this is that she spent her monies and took care of the family in Florida. In addition, when Mr. Michael rented the properties situated on Parcel 297 and retained all of the rents she never asked for any share in the rents because she understood that they were acting as a team in order to accumulate financial resources and real property for them as a unit. I am also of the view that she utilized her own money to purchase items for the family and provided housewifely services to Mr. Michael and took care of the children.

[52] In view of my above findings, where as in the case at bar, there is no express agreement between the parties in relation to the beneficial interest, the court must go on and determine whether based on the acts or the conduct of the parties, a common intention can be gleaned that the party who is not the legal owner would have a share, having done so, the court must go on to determine that share.

[53] It is the law that when there is evidence before the court upon which the court could properly conclude that each of the parties is entitled to an interest in the property, the starting point is to presume that they are equally entitled to a half share or interest in the property. Of course this presumption can be displaced by cogent and credible evidence which points to a different position. **See White v White [2001] 1 AC 96 in which Mr. Lord Nicholas** stated that

“where each spouse has contributed equally in their different sphere to the family, as a general guide equality in the distribution of the matrimonial assets should departed from only if and to the extent that there is good reason for it.”

[54] I also adopt the views expressed by Saunders **JA in Stonich v Stonich Civil Appeal No. 17 of 2002 BVI** in which he said:

“In assessing the respective contributions of husband and wife, there was a time when one regarded the fruits of the money earner to be more valuable, more important than the child rearing and home making responsibilities of a wife and mother. If the man was reasonably successful at his job and the family fortunes were vastly improved, his contribution was almost automatically treated as being greater than that of the wife who remained at home. Ironically, if the man’s business failed, whether through bad luck or ineptitude, his wife invariably shared equally the couple’s hard times.

The Court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little a contribution that is less measurable but equally important to family structure. In the vast majority of cases where these two types of contributions are in issue – that of homemaker and that of an income earner, it is the wife who has stayed at home while the husband has performed the role of breadwinner. There is therefore an element of gender discrimination role in the home.”

[55] Accordingly, I am of the considered opinion that even though the principle stated in **White v White [2001] 1AC 96** is relevant to the case at bar it represents no more than a useful starting point. I have no doubt that the circumstances of this case requires that “the equality is equity” principle departed from. It seems to me that based on the totality of the circumstances including the length of the parties’ marriage, coupled with Mrs. Michael’s contribution to the care and maintenance of the family, in happier times, I dare say, I am of the considered opinion that Mrs. Michael is entitled to a 30% beneficial interest in Parcel 298. Therefore, I hold that Mrs. Michael is entitled to 30% beneficial share in the property which Mr. Michael holds on trust for her.

[56] For the sake of completeness, I state that in my determination above, of the beneficial interest or share to which Mrs. Michael is entitled, I sought to ensure that the award is just and reasonable in all of the circumstances of the case. I have borne in mind that later in the marriage Mr. Michael seemed to earn quite a bit of money either by way of bonus or salary and that he contributed towards upkeep of his wife and children, the latter who were residing in Florida. This must be viewed in light of the role of Mrs. Michael in rearing two

sons while working and providing support to her husband. Without seeking to downplay her role in the home, it is worth nothing that in my determination of her beneficial interest in the properties, I have taken into account her non-financial contributions to the family. This must also be viewed against Mr. Michael having rented the property situated at Parcel 297 and Parcel 298 and having retained the proceeds for his sole use. I have also taken into account that their marriage was a lengthy one. I have also brought into the picture that the fact that he utilized moneys from their joint account.

[57] In order for there to be a clean break between the parties, in principle it may be in the parties' best interest for them to have the property valued by an agreed valuator and either one of them should seek to purchase the other's interest and so become the sole legal and beneficial owner of the property, as suggested by Ms. Benn.

[58] **Parcel 328**

I come now to determine whether, if at all, Mrs. Michael is entitled to any share or interest in the property situated on Parcel 328. The situation in relation to Parcel 328 is somewhat different. There is no evidence to support a finding of any prior discussion to acquire Parcel 328. The court must therefore examine all of the circumstances and their course of dealings in relation to Parcel 328, in order to determine whether based on the conduct of the parties there is any basis from which to infer or impute a common intention to share the property beneficially – the conduct in order to suffice must give rise to a constructive trust.

[59] In this regard yet again, I find the approach of Baroness Hale in **Abbott v Abbott** *ibid* very helpful and I can do no more than to adopt it. A review of the evidence indicates that in recent times the parties treated property at Parcel 328 as their matrimonial home as Mrs. Michael sent furniture from Florida to furnish the home at Parcel 328. When Mrs. Michael visited Antigua she usually stayed in the property at Parcel 328. At all times, Mrs. Michael worked and contributed to the living expenses of the family even though in subsequent years Mr. Michael appeared to have been in a better financial position than her and was able to make more substantial contributions. I accept that in the early stage of the marriage Mrs. Michael was the greater income earner.

[60] As stated earlier, I am of the respectful view that the parties did have a joint account of which Mr. Michael withdrew to cover their expenses. I am not of the view that this money was put towards the acquisition of Parcel 328. It is clear that Mrs. Michael made no direct financial contribution to the acquisition of Parcel 328. There is no doubt that Mrs. Michael made substantial contribution to the furnishings of the home situated at Parcel 328 with Mr. Michael's approval. Taking into account the totality of circumstances, it is clear that the parties organized their financial affairs in a manner which evinces a common intention, by way of inference, that Parcel 328 was to be owned by both of them jointly. I do not believe Mr. Michael when he said that he told Mrs. Michael about his purchase of Parcel 328 after the fact and that there was no other discussion between them in relation to the property after he had so advised her.

[61] On the other hand, I accept without any reservation Mrs. Michael's evidence that the parties live in the house at Parcel 328 (whenever she was in Antigua) and that during those periods she cooked, cleaned and provided other household services. In addition, there is no doubt in my mind that based on Mr. Michael's conduct in relation to Parcel 328 a common intention can be inferred that the property was jointly owned and in furnishing the house and, among other things, Mrs. Michael has altered her position to her detriment. I am not of the view that Mrs. Michael contribution by way of her purchase of the furniture is minimal and of no significance. While there is no doubt that during a brief period of the 42 years marriage, the relationship between the parties was strained and Mrs. Michael would stay with her father during her visits to Antigua. However, I am enjoined to take a holistic approach to the matter based on the very instructive pronouncements by Baroness Hale in **Abbott v Abbott** *ibid*. In so doing, I do not for one downplay the fact that Mr. Michael and Mrs. Michael treated each other as a team and organized their financial affairs in that manner. It is clear to me that the parties are now treating Parcel 328 as their matrimonial home.

[62] Accordingly, I do not for one moment accept that Mr. Michael at all times treated the property situated on Parcel 328 as his exclusively and that Mrs. Michael gave him a few

unsolicited pieces of furniture to place in the property. Further, I am of the view, that in all of the circumstances, when Mr. Michael went to Florida and assisted Mrs. Michael to relocate, to the property situated at Parcel 328, it was with the knowledge and common intention which had arisen previously that she was entitled to a beneficial interest in the property even though the legal interest inhered in him alone. By way of emphasis the parties were now treating Parcel 328 as their matrimonial home. There is not a scintilla of evidence to indicate that he even attempted to treat Parcel 328 in a separate manner from that of the other properties registered in his sole name. In all of the circumstances and based on their entire course of dealings in relation to Parcel 328 it is beyond doubt that Mrs. Michael acted to her detriment based on the above common intention.

[63] This leaves me now to only determine her share or interest in Parcel 328. Applying the principles in **Stonich v Stonich ibid** and **White v White ibid**, I am of the respectful opinion that it is fair and reasonable, based on the totality of circumstances, that a 30% share or interest in Parcel 328 be awarded to Mrs. Michael as I so do. To award her 50% as urged for on her behalf by learned counsel Ms. Benn would be too generous.

[64] **Parcel 297**

For the sake of completeness, I would briefly look at Parcel 297. On a review of the entire evidence, it is clear to me that, as agreed to by the parties that when they acquired Parcel 297 intended it to be their matrimonial home and treated it as such. In view of the fact that Mr. Michael has in his affidavit in answer deposed that Mrs. Michael has a legal right or interest in the property it only leaves for me to determine the extent and nature of her entitlement. Taking into account the totality of the circumstances, I am of the view that it was the intention of the parties that Parcel 297 is owned jointly, as conceded by Mr. Michael, even though it is registered in his sole name.

[65] I am also of the view that Mrs. Michael contributed to the acquisition of the property; and as stated earlier, I believe her when she deposed to having given Mr. Michael her pay check coupled with the household services that she provided to him during the earlier years in which they lived under the same roof. I find the principle stated in **White v White**

very applicable to Parcel 297. Accordingly, I am of the view that there is nothing to prevent me from concluding that the property situated on Parcel 297 is owned by Mr. Michael and Mrs. Michael in equal shares. I so declare.

[66] **Accounts**

In view of the fact that in my determination of Mrs. Michael's interest in the parcels, I have already taken into consideration the fact the Mr. Michael has retained the rents for his sole use, it is no longer necessary for me to address this issue and to make the declaration sought by Mrs. Michael. It is clear to me that in view of the totality of circumstances, it would be unfair and unreasonable to require Mr. Michael to account for the rents that he has collected in relation to the two properties situated at Parcel 297 and Parcel 298 Cassada Gardens since I have taken into account in my determination of her share, the fact that he has retained the rents into account in my determination of Mrs. Michael's share or interest. I therefore decline to accede to Mrs. Michael's request.

[67] Finally, Mrs. Michael has sought an order from the court that the properties be appraised by an independent and agreed valuator and that either party is given the opportunity to buy out the other party. I pause to note that, except for Parcel 297 in which the parties have equal share, in relation to Parcel 298 and Parcel 328 respectfully, Mr. Michael has the greater interest or share in those properties. It seems to me, therefore, that he should be afforded the first right to buy out Mrs. Michael's share in those two properties namely: Parcel 298 and Parcel 328 within a reasonable time and it is only if he is unable to exercise this right that Mrs. Michael should be permitted to buy out Mr. Michael's interest or share in Parcel 298 and Parcel 328.

[68] It is with the need to do justice between the two parties that I will make the following orders, being mindful of Mr. Michael's substantial interest or share both in Parcel 298 and Parcel 328 respectfully.

[69] **Conclusion**

For the foregoing reasons, I give judgment for Mrs. Heather Michael against Mr. Romig Westerby Michael as follows -

- (a) I declare that the property situated at Parcel 297 is held by Mr. and Mrs. Michael in equal shares; Mr. Michael holds Mrs. Michael's 50% interest or share on trust for her.
- (b) I declare that Mrs. Michael is entitled to a 30% interest or share both in properties situated on Parcel 298 and Parcel 328 which Mr. Michael holds on trust for her.
- (c) I order that within 90 days of the making of this order all of the properties be valued by an agreed valuator and be sold. Mr. Michael is given the first option to purchase Mrs. Michael's interest or share in Parcel 298 and Parcel 328.
- (d) I further order each party has the option to purchase the other party's interest or share in Parcel 297 as stated in the valuation of the agreed valuator.
- (e) I order each party to bear his or her own costs.

I gratefully acknowledge the assistance of all Learned Counsel.

Louise Esther Blenman
High Court Judge

It is important that the court apologises for the delay in finalising this matter, which was occasioned by administrative difficulties with which all concerned are aware.