THE EASTERN CARIBBEAN SUPREME COURT

INTHE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2005/0464

BETWEEN:

MELBA BROWN

Claimant

-and-

GEORGE BROWN

Defendant

Appearances:
Mr. Charlesworth O.D. Brown for the Defendant
Ms. E. Ann Henry with C. Debra Burnette for the Claimant

.....
2007: October 29
2008: September 30
.....

JUDGMENT

[1] **Harris J**: These are proceedings between a divorced husband and wife over the beneficial ownership of their two (2) matrimonial homes and rental income accruing thereto.

[2] Melba and George Brown commenced an intimate relationship in 1971 culminating in their marriage in 1975. During the subsistence of their 31yr marriage two properties were purchased in the sole name of George and several in the name of Melba or, Melba and her son. One parcel of land in the name of the Defendant, George, was purchase in the year 1975 but prior to the parties marriage[1]. The second parcel of land was purchased in 1981.

[1] See acknowledgement of this in pp 67 and 68 of trial bundle. See endorsement on right column of said page 68

[3] Two (2) homes were subsequently constructed on the two parcels of land registered in the sole name of George Brown. The first house was constructed substantially from a joint mortgage loan from the Bank of Nova Scotia, the payments for which were made from a joint account between Melba and George Brown. Both party's salaries were paid into the joint account. This first house was completed in 1976 (parcel 100). The construction of the second house commenced in 1982 and was complete in or around the years 1987/1988 (parcel 101)[1]. The parties moved into the second house in 1987 and the defendant rented out the first house. The defendant alleges he needed to rent out the first house in order to facilitate his meeting its mortgage payments which was his sole responsibility.

[4] The claimant alleges that several refinancing loans were obtained[2], presumably from The Bank of Nova Scotia, over a period of time in relation to the first property (the rented property) or which had a benefit to the property, and all serviced from the same joint account.

[5] Melba Brown for the most part and particularly in the latter half of the marriage earned a greater income than her husband, George[3].

[6] She acquired properties in her own name and one jointly with her son. George Brown contends that the properties acquired in his sole name were not acquired jointly with his wife Melba, and that there was no common intention between them that they would share equally in the property or at all. He contends that Melba did not contribute to the acquisition of either property or to the buildings constructed thereupon.

[7] In fact, he contends that his wife routinely withdrew the substantial part of her salary which had been deposited into the joint account and did so very shortly after each deposit. George Brown contends further, that the joint mortgage loan and loan bank account was a mere formality ,the proof of which was evidenced

[1] 1st property: Block 15 2287B parcel 100 South Central Reg. Section; 2nd property: Block 15 2287B parcel 101 South Central Reg. Section.
[2] See copy of the Land register, Encumbrance section, at pp 52 of the trial bundle for particulars of the loans.
[3] The Defendant did not plead this. His occupation has been placed before the court. The claimant went further and placed documentary evidence before the court of her income over the relevant years.

by the said conduct of Melba in relation to her withdrawals from that account. He said that it was always agreed and understood that he was responsible for maintaining the household and providing housing for his family[1].

[8] Melba Brown contends that prior to the marriage she and her husband George set about looking for land, presumably to construct their matrimonial home. She contends that the first parcel was purchased in pursuance of a common intention that they acquire a parcel of land for their joint benefit and ownership. Further, that the mortgage loan, the subsequent loans, the purchase of the adjoining parcel of land and ultimately the construction of the two homes on the respective lots [2] were done jointly and in furtherance of a common intention that they acquire these properties for their joint ownership and benefit. The Claimant contends that since the mortgage loan came to an end in 2000 (on the evidence the relationship between the parties broke up in 2002 and the marriage dissolved in 2006), the Defendant has continued to rent the 1st house and receive and apply the rental income for his own benefit and to her exclusion.

[9] The issues arising in the instant case are:

(i) Whether it was intended that the parties Melba and George Brown, share the beneficial interest in the properties conveyed to the Defendants alone and if so

(ii) In what proportion was it intended that they may share the beneficial interest.

(ii) Whether the Claimant is entitled to a one half share in the rental income from the property which was rented and from when.

THE LAW

[10] The law relied upon in this case is found in the usual authorities including that of Pettit v Pettit [1946] 2 All ER 384, Gissing v Gissing [1970] 2 All ER 780, Lloyds Bank PLC v Rosset and another [1990] 1 All ER, Grant v Edwards and another (1985) 36 WIR 182 and the long line of cases following these authorities.

[1] See Pleadings, Witness Statement and cross examination. Mrs. Brown disputes this contention.
[2] The evidence is that the 2nd home was constructed substantially on the 2nd parcel but partially on the 1st parcel.

[11] The Claimant and indeed the Court, further rely on the Privy Council authority of Abbott v Abbott Appeal No. 142 of 2005, an appeal from the jurisdiction of Antigua and Barbuda. This case, in the judgment delivered by Baroness Hale of Richmond, begins by noting that unlike the United Kingdom and other Caribbean Countries **"***Antigua and Barbuda has no equivalent of the wide powers of property adjustment enjoyed by the divorce courts in the United Kingdom. Property disputes have therefore to be resolved according to the ordinary law***"**. The upshot of this is that a spouse in Antigua and Barbuda is more constrained than her counterpart in another territory in what she can claim as her interest in property registered in the sole name of the other spouse. The court cannot blindly rely on the authorities which are based on the modern legislature. The High Court is not about to create new law[1].

[12] The kernel of the applicable law with respect to determining the beneficial ownership of a former matrimonial home is, I believe, captured in the combination of the ***Rossets case*** [2] and the ***Abbott case***[3]**.**

[13] I set out the relevant learning in each case below for clarity and convenience.

[14] In Rossets case Lord Bridge of Harwich set out the relevant legal principle [4] thus:

> **"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 their house as their home and managing their joint affairs, there was at any time prior to acquisition or understanding reached between them that the property is to be shared beneficially. The finding of an agreement to share in this sense can only I think based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding of this effect is made it will only be necessary for the partner ascertain a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she acted to his or her detriment or significantly altered his position in reliance on the agreement I order to give rise to a constructive trust of proprietary estoppel".**
>
> **"In sharp contrast with this situation is the very different one where there is no evidence to support the finding of an agreement to share, however reasonable it might be for the parties to each reach such an arrangement if**

[1] The Judicial Board of the Privy Council has thankfully already done so in the ***Abbott case***.
[2] Lord Bridge of Harwich [1990] All ER 1111 at pp 1118h-1119c
[3] Baroness Hale of Richmond (P.C. Appeal 142 of 2005) at para 6
[4] The Privy Council in the Abbott case also set out the same passage

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 the mortgage installments, will readily justify the inference necessary for the creation of a constructive trust. <u>But as I read the authorities, it is at least extremely doubtful whether anything less will do".)</u> (Emphasis mine)

[15] In the *Abbott case* the Board expanded the applicable and limiting [1] legal principle set out in ***Rossetts case*** **(**emphasized above**)** and summed up the law thus:

> "**The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it."**

[16] The extent of the interest a party may have in relation to the matrimonial property once a court has determined that both parties have a beneficial interest includes; what in all the circumstances is a fair share[2]**.** Several issues arise in this case.

ISSUE (i)

Was it intended that the parties share the beneficial interest in the properties, parcel 100 and 101?

[17] The Claimant's contention here is simply that there was a common intention between the parties that the two properties be jointly owned. Included in support of this contention, the Claimant, Melba Brown, says; **(i)** that she was employed and had the capacity to contribute at the time the deposits were made on the two parcels of land **(ii)** that her grandmother, Cristobel Emmanuel, provided the collateral in the form of a parcel of land, to facilitate the parties in meeting the requirements for securing the mortgage loan for the construction of the 1st home **(iii)** that the loan was a joint loan between them both **(iv)** that the loan was serviced by a joint account into which her salary was required to and did go **(v)** that the several subsequent loans were in the joint names of the parties and, on

[1] This sought to shed light on the words of limitation placed on the applicable legal principles set out in the Rossets case in the last sentence of the passage set out above.
[2] See above Joseph-Olivetti J. ANUHCV 2003/0003 Edmund v Edmund

a loan taken out by the claimant alone, with Barclays Bank Plc[1], there accrued a benefit of rebated construction materials from a specified hardware, which was a benefit peculiar to her as an employee of Cable & Wireless and that this benefit was applied to the disputed property **(vi)** that the correspondence between the Bank and the parties refer to both herself and her husband as the joint owners of the relevant property **(vii)** that the evidence taken as a whole manifests a common intention to acquire and or hold the property jointly and to own them in equal shares.

[18] The Defendant on the other hand contends **(i)** That the 1st parcel of land was purchased entirely by him for his sole benefit prior to the marriage (refer to pp 119-121 of the Core Trial Bundle for documentary evidence in support – a series of receipts). This, the court notes, is evidence of who physically made the purchase payments but is not conclusive of determining the beneficial ownership[2] **(ii)** That the joint account was initially a sole account of the Defendant George Brown and only upon the insistence of the Bank at the time of negotiating the loan agreement was it made a joint account: I do not quite follow the significance of the Defendant's contention here. The point, I would think, is that at the material time and for the material purpose it was a joint account into which both their incomes were deposited. In fact, it suggests that whatever may have existed prior to the commencement of the mortgage loan and the 'joining' of the account, at this juncture there was a meeting of the minds with respect to this joint venture **(iii)** That the joint account did not reflect a pooling of resources: The Defendant contends that the Claimant routinely withdrew most of her salary from the joint account upon it being deposited to the joint account. A careful look at the exhibited bank books would show a systematic decline in the balance as the month progressed. However, I do not observe that to be a peculiar trend. This trend I would say is not abnormal and would represent the account balance movement of the vast majority of income earners. The Defendant in support of this contention relied on the Bank of Nova Scotia passbooks which date back to September 1992, presumably to show a system of the account operation on the part of the joint holders of the account and suggests that the draw-down on the

[1] The claimant's evidence in cross examination is: "*The money to service this account came from the joint account. I took out the Barclays loan"*

[2] However, the claimant in cross examination said that they agreed to purchase land but "... it is not that he ask me to contribute to the purchase".

account is substantially that of the claimants doing. The evidence in the case suggests that the period covered by the bank books represent a period in which the income of Melba Brown exceeded what would have been her half share contribution to the mortgage payment (see pp 56 of the Core Trial Bundle for the Chronological progression of the Claimants income from 1970-2004).I find that the withdrawal of the sums by the claimant as alleged by the Defendant would not necessarily be inconsistent with Melba Brown's continued contribution to the loan commitment. The Defendant, in cross-examination, like the claimant, acknowledged his unlimited access to the said account. However, the evidence in the matter, particularly on cross-examination of the Claimant, accords with the Defendant's contention that the Claimant withdrew the substantial portion of her income from the joint account from time to time and I so find. This was not done with sufficient mechanical regularity to satisfy me that it represented a conscious scheme and deliberate act on the part of the claimant intended to separate a significant portion of her earnings from that of the defendant and from the stated purpose of the joint account. These withdrawals were not done in a manner at variance with her contentions with respect to the existence of her contributions towards an acquisition of her share in the matrimonial property [1]. There is no evidence before me to rebut the claimant's contention that she made direct financial contributions to the account from which the mortgage payments were made and for that purpose. The substantial periodic withdrawals from the account that counsel for the Defendant referred the claimant to in cross examination are not evident throughout the entire period covered by the 'books' and are disputed by the claimant as necessarily being her withdrawals. The upshot of the evidence on this point is that the said withdrawals are not all clearly referable to the claimant. **(iv)** That the Defendant discharged his obligation to provide shelter, meet the mortgage payments and otherwise make ends meet: In her evidence in cross examination and evidence in chief at para 2, 4, 13, 18, 23, 24, 25, 27 the Claimant contends that she did make a financial contribution to the acquisition, to loan payments, improvement of the subject properties and the

[1] The claimant's evidence on cross examination with respect to her other acquisitions is "*The money to purchase the land I bought through Barclays Bank came from the joint account Yes I did it and it was not our purchase. He did not know about it".*

expenses of family[1]. I accept however, the evidence of defendant in preference to that of the claimant[2], that he alone purchased parcel 100.

[19] The evidence referred to in "(iv)" in the para. above, like the Defendant's evidence that he struggled to meet his commitment to pay the mortgage and household expenses because the Claimant did not make a significant contribution to same; are mere assertions. The Defendant's evidence in chief suggest however, that his struggle to make ends meet would not be so if his wife, a significant income earner, was contributing significantly to the mortgage and general household expenses. This point at first blush is not without merit. Having regard to the high income level of the Claimant, an income level that arguably could have met the entire household expenses, if that were her intention, but certainly could have met the mortgage payment in its entirety, it is peculiar that the Defendant had to struggle, as, on the evidence, I find he did. The Claimant has not denied that the Defendant did struggle to meet his obligation, and indeed indirectly supports this position in furtherance of her case, that she was often enough required to and did in fact make her contribution to the mortgage payment and household expenses[3]. **(v)** That the Claimant acquired other properties in her own name at the expense of her contribution to the household expenses and of her capacity to contribute to acquiring a share in the disputed matrimonial property: The Claimant has attempted to provided an explanation for the acquisition of the several other properties of which the Defendant is not the registered proprietor. No meritorious evidence was adduced by the Defendant in support of his counterclaim that he acquired a share in the Claimants property. He merely asks the court to draw an inference adverse to the Claimants contention that she met her obligation to contribute towards her acquisition of a half share or any share in the disputed properties and purchased other properties independently of the Defendant. On the evidence, there is no merit in the Defendant's contention that the Claimant's "acquisitions" are proof of her absolute failure to contribute to and acquire a share in the disputed properties. This fact however, does impact on the extent of the Claimants share

[1] The claimant on x-exam*: "it is not true that the only contributions I made was to groceries...yes I did other things .The money to do other things came from my salary that went to the account."*
[2] See para 2 and para 4 of the claimant's evidence in chief at pp 30 of the trial Bundle.
[3] In her evidence in chief at pp 37 of the bundle the claimant acknowledged that from the early 1990's the defendant paid the mortgage and utilities from his salary and she, the other household expenses.

(if any) in the disputed property in this particular case. I note that her property acquisitions were shrouded in some secrecy. In cross examination the claimant, Melba, said in relation to one of the non-matrimonial properties that *"I am a joint registered proprietor with my son. The servicing of the loan was done by the rent. The property was rented. No, I did not inform the defendant of any of this"*[1].

[20] I simply do not accept that the Claimant and Defendant in the early throes of marriage would not have had the common intention that the property first acquired would not be to the benefit of both parties. The claimant gave evidence of the conduct of them both in relation to the properties and the reason why she allowed them to be placed in the defendants name alone. I do not accept that the Claimant and Defendant would not have intended sharing the beneficial interest in circumstances where, as in this case, the construction loan was a joint loan. If it were the intention of the Defendant the he be the sole owner he should have obtained the loan alone. As appear to be the case here – based on his income or any other basis for that matter - he could not secure the Bank of Nova Scotia mortgage loans on his own and could not reasonably have expected that he would obtain the whole of the interest in the property to which the joint loan related. There is nothing in the evidence of the Defendant that effectively establishes that the claimant merely lent her name to the mortgage transaction for some ulterior reason (other than to acquire a beneficial interest) known to and mutually understood by the two parties. The upshot of the claimant's evidence, and it remains unshaken and proved, is that she was not merely a nominal party to the loan agreement. Discussions between herself and the Defendant in relation to matters pertaining to the financing and of construction of the house would have to have taken place for her to have; presented herself to the bank, create the joint account, arranged for her salary to be paid into the joint account, execute the mortgage and subsequent agreements creating her legal obligation for repayment.

[21] It is not easily accepted that the Claimant's grandmother would have been used to provide the initial collateral to secure [2] the first loan without the common intention between the Claimant and the Defendant and indeed probably the

[1] See also foot note 1 on pp 6 above for another expression of secrecy.
[2] Albeit, as it turned out, for a relatively brief period

grandmother also, that the Claimant acquire a share in the subject property (the 1st property). Indeed, the involvement of the Claimant's grandmother in this manner is more likely to suggest a pre-existing common intention that would have moved the Claimant to seek or accept her grandmother's assistance or certainly would have moved the grandmother to have provided the assistance. Again, there is no sufficient evidence that the grandmother merely lent her name to the transaction for some ulterior reason contrary to the claimants assertion that a common intention existed between the parties, that she, the claimant, acquire a beneficial interest in the registered parcel 100 and building thereupon.

[22] Further, notwithstanding what I accept as the claimants subsequent regular joint account withdrawals, the Claimant had undertaken joint and several liability for the repayment of the initial mortgage loan and interest[1] and would have remained so liable for the duration of the mortgage agreement; a detriment that must be considered as part of the whole of the conduct of the parties. However, the Bank's treatment of the parties as equal partners with respect to their 'mortgage liability' does not represent the whole of the parties conduct.

[23] The acquisition of the 2nd parcel of land and the construction of the home thereupon; is subject to the same finding as that of the 1st parcel and house. It was acquired and is subject to a common intention that the Claimant secured a share in that property commensurate with her financial contribution. The acquisition was funded, in small part, out of the same depleted joint account in the names of the parties and construction financed in part from subsequent loans relying on the 'joint application' of the parties and on the 1st property as security. (See the endorsements on loan documents in the trial bundle). The claimant alleges that completion of the 2nd house benefited from the claimant's building material rebate scheme as a Cable and Wireless employee. There is sufficient evidence to support the claimant's case for a share in the second property. There is no sufficient evidence of the breadth of her expenditure she alleges. Even if a party makes contributions (such as itemized in para. 23 and 24 of the claimants witness statement) to the house, even to the construction of a house, it does not necessarily amount to a contribution towards the acquisition of a share.

[1] See Hyatt v Stanley [2003] E.W.C.A Civ 942; see also the **Abbott case** on the significance of this liability.

The Banks treatment of the parties as equal partners for its own commercial purposes does not represent the whole of the conduct of the parties in this matter or necessarily represent the party's intention with respect to the extent of their respective beneficial interests in parcel 100 or 101.

[24] In para 31 of her witness statement which refers to a period when the joint account was still in operation, which would place it certainly in the nineteen nineties and very possibly in the nineteen eighties, Mrs. Brown refers to requesting from the Defendant her share of the rental income from parcel 100. That she did at that time understand that she had a share in something which she could demand says a lot about her astuteness and the arms length relationship between the parties at that time.

[25] On the evidence however, I cannot say that the evidence supports a common intention between the parties for the Claimant's acquisition of an equal share in the first (parcel 100) property[1]. Further, in the context of a constructive trust, the evidence does not establish a direct contribution by the Claimant towards the acquisition of the 2nd parcel of land or an equal contribution to the financing [2] and construction of the house on parcel 101, the 2nd property for the purpose of acquiring an equal proprietary interest. The evidence suggests that beyond her name appearing on the Scotia Bank loan agreement, she was not a substantial contributor to the loan commitments. (See para. 18(iii) above). The whole of the conduct of the parties does show the common intention that the claimant acquire a share in the property but the evidence discloses less than a half share actual contribution by the claimant.

[26] The Claimant's income, particularly towards the latter half of marriage, was significant.[3] The financial struggle – albeit successful – of the family (which I accept as a fact, is in part evidenced by their moving premises several times) suggests that the Claimant did not (and perhaps even, for her own good reason) substantially commit her income to the day to day family affairs and the mortgage payments.

[1] See para 25 above on the question of the extent of the respective interests.
[2] The evidence is that it was not financed from a Bank Loan.
[3] See the document bundle for the claimant's evidence of her increasing income over the relevant years

[27] Insufficient inroads have been made by the Claimant in this case to establish her contribution to the general household and the nature and extent of it is not detailed in the documentary or oral evidence. I take the point made by the Defendant though, that in any event, several of these expenses if not all, would be expenses that a working wife and or mother is expected to make in the normal course of family life and do not necessarily stand as a contribution to the acquisition of a share in the matrimonial property.[1] The force of her claim to having made independent and substantial contributions to expenses and even to improvements if not completion works, to the properties or either of them, is further minimized by certain of the claimants admissions in cross examination. In cross examination Mrs. Brown said that: *"I got the money for my expenses from my salary in the joint account"* and *"I bought every thing in the house from the joint account"* and in relation to the Barclays Bank loan for her personal property purchase, she said *"The Barclays Bank purchase was to me alone. The money to service this account came from the joint account. I took out the Barclays Loan"*. Her income was applied to a wide variety of commitments of which she has not satisfied the court was of the nature capable of, or intended to, acquire an equal interest in the 2nd property (and for that matter, the 1st property also) pursuant to the common intention. In all the circumstances however**, the court finds that there was a common intention between the parties that the claimant/spouse do acquire a beneficial share in parcel 100, the first property and parcel 101, the second property, commensurate with her contribution.** How then does one quantify the extent of the claimant's contribution toward her beneficial share in the property registered in the name of the Defendant?

ISSUE (ii)

<u>In what proportion was it intended that they may share the beneficial Interest?</u>

[28] On the issue of quantification, the following passage in **Lord Diplock's** speech in **Gissing v Gissing[2],** provides useful guidance:

> **"I take it to be clear that if the Court is satisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made on this**

[1] See pp 257, Elements of Land Law 4th edit., Kevin Gray. And, I so find in this case.
[2] At page 792 of the judgment

understanding, the court in the exercise of its equitable jurisdiction would not permit the husband in whom the legal estate was vested and who has accepted the benefit of the contributions to take the whole beneficial interest merely because at the time the wife made her contributions there had been no express agreement as to how her share in it was to be quantified. In such a case the court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse on which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently. It is only if no such inference can be drawn that the Court is driven to apply as a rule, and not as an inference of fact, the maxim "equally is equity" and to hold that the beneficial interest belongs to the spouses in equal shares."

[29] Lord Reid warned against this approach later in **Gissing v Gissing**[1]:

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

[30] And Lord Pearson[2] in the same case **said:**

"No doubt it is reasonable to apply the maxim in a case where there have been a very substantial contribution (otherwise than by way of advancement) by one spouse to the purchase of property in the name of the other spouse but the proportion borne by the contributions to the total price or cost is difficult to fix. But if it is plain that the contributing spouse has contributed about one-quarter, I <u>do not think it is helpful or right</u> for the court to feel obliged to award either one-half or nothing". (emphasis mine)

[31] On this issue, the claimant's contention is that she is entitled to a half share in the properties and the rental income thereto and the Defendants contention is that

[1] At page 782-783 of the judgment
[2] At page 788 of the judgment

he is entitled to the whole of the beneficial interest. This is familiar ground. These are the classic opposing contentions.

[32] The court is satisfied that the common intention that the claimant/spouse acquire a share in the first and second property (parcel 100 and 101) existed. It is clear that it was intended that the extent of the share be determined by the extent of the respective contributions. The relationship between the parties during the relevant period appeared to be very arms length and even perhaps, business like. The claimant focused much of her efforts and finances in the later period on other acquisitions not depending on the disputed properties. Perhaps it is because of her limited contribution over time and consequent limited expectation of a substantial share in the parcel 100 property and even more so with respect to parcel 101, that she turned her attention to her own personal acquisitions of which she could afford and in which the Defendant was to have no interest in whatsoever. From the 1990's, I find on the evidence, that the Claimant substantially reduced her contribution attributable to the 2nd acquisition, parcel 101 and the construction of the house thereon. **(**emphasis mine**).**

[33] The claimant's evidence on the quantum of her financial contribution (and to some extent the nature of her contribution) is of an amorphous nature. She has not presented any dollar figures or even attempted to give such. No value of the properties has been submitted in evidence by the parties. In para 24 of the claimant's witness statement she itemizes several items that she purchased for the premises and in cross examination she refers to certain works she carried out on the building such as installing hurricane shutters. These are items in which she would have acquired an interest in or did for her own convenience and comfort, but are not here referable to an acquisition of a beneficial interest in the parcel(s) of land with building(s). In any event the value of these purchases and financial input, against the value of the property at that time has not been provided in order for the court to make an informed decision as to the extent of the "contribution". The claimant would have had to lead some modicum of evidence - if available - to establish this aspect of its case.

[34] The defendant alleges that the claimant did not make any contribution throughout the extended life of the Bank of Nova Scotia loan. This clearly is not so. Although, from the 1990's the claimant's contribution towards the acquisition of the property and the payment of the mortgage is, on the facts as I have found them to be, much reduced. *T*he period prior to that, suggests that she was a more significant contributor. Oddly, neither party has detailed these contributions or absence of them, in this period with sufficiency. I acknowledge the effect of the passage of time on the recollection of the parties, but the court needs something to work with. In these circumstances, regrettably, the court need rely on what Lord Reid referred to as a "*... rough and ready evaluation*" [1] in working out the claimants beneficial interest in the property.

[35] **I determine this beneficial interest in parcel 100 attributable to the claimant to be a 40% interest in parcel 100 (the first property) and her interest in parcel 101(the 2nd parcel) to be 25%**. Further, I determine that the Defendant did not acquire any beneficial interest whatsoever in the other properties registered or otherwise standing in, the name of the claimant and/or the claimant together with any other person(s).

ISSUE (iii)

Is the claimant entitled to one half of the rental income of one of the disputed properties?

[36] The defendant's evidence is that the rental income of $1200/month was received up to July 2007. He said that although he does not recall how much of the rental income was deposited to the account; income was deposited to the joint account either by himself or the claimant when she received the rent cheque. Prior to the divorce in 2006, any rental income applied to the mortgage or to actual expenditure on the houses is to be traced to the value of the property and ultimately to the surplus over the outstanding mortgage balance, if any. The Claimant will regain this inherent value upon receipt of her interest in the properties. That undetermined portion of the rental income not applied to the mortgage and the direct expenditure on the properties prior to 2006, cannot on

[1] In Gissing v Gissing at pp 782-783

the facts of this case, be readily apportioned between the parties by utilizing any "*rough and ready valuation*" or arithmetical or actuarial formulae, but, as a consequence, are best left to be considered as joint funds applied for the benefit of the general household[1]. This is so, notwithstanding the court's percentage determination of the parties' respective interests in the two properties. For the court to do otherwise and to attempt such apportionment, would be imbuing with an *aura of scientific and mathematical respectability, what in fact would be mere hypothesis and speculation.* Neither party can say definitively, that they did not benefit from those monies in one way or the other. However, I apportion the rental income of $1,200.00 A MONTH **after** the Divorce in 2006, in accordance with my finding as to the parties respective percentage interests in the rental property. Regrettably, neither party and more particularly the claimant, have given evidence of the specific date of the Divorce. The only evidence of this is from the Defendant who said that the parties divorced in '2006'. The uncontradicted evidence from the Defendant is that the premises have not been rented from July 2007. On this basis, the claimant is entitled to 40% of $1200.00 = $480.00 x 1yr (12 months) = EC $5,750.00

ORDER

[37] FOR the reasons provided above, IT IS HEREBY ORDERED:

(i) That pursuant to a common intention, the Claimant has acquired a beneficial interest in parcel 100 Block 15 2287B South Central Registration Section and parcel 101 Block 15 2287B South Central Registration Section, respectively;

(ii) That the beneficial interest acquired by the claimant is; a 40% share in the said parcel 100 and 30% share in the said parcel 101;

(iii) That as a consequence of her beneficial interest, the Claimant is entitled to EC$5,760.00 as the claimant's share of the rental income on the said parcel 100, up to July 2007;

(iv) That the Defendant do pay on the outstanding Judgment sum, interest at the rate of 5% per annum from the date of this Order until satisfaction;

[1] Accepting as I do, the breadth of the Defendant's expenditures on the household, I believe the claimant, and at an earlier stage of the marriage her children also, would have received this benefit. There is no evidence to suggest the contrary.

(v) That due to the divided success on the issues, the Defendant do pay 70% of the Prescribed Costs on the prescribed scale, pursuant to CPR 2000;

(vi) That the matter being a mixed claim with the substantial claim not being for a monetary sum, the claim is to be treated for purposes of Costs , as EC$50,000.00, yielding therefore the Prescribed Costs of EC$14,000.00 less 30%[1] = **EC$9,800.00 or such sum as otherwise agreed between the parties in writing within 12days of this order.**

[38] The following authorities were also relied on by the respective parties:

List of Authorities

Petit v Petit [1946] 2 All ER 384

Gissing v Gissing [1970] 2 All ER 780

Lloyd's Bank P.L.C. v Rosset and another [1990] 1 All ER 1111

Abbott v Abbott P.C. Appeal No. 142 of 2005

Snell's Equity (31st Ed) Chap 22 pp 563-565

Midland Bank PLC v Cooke [1995] 4 All ER 562

Arlene Kendall v Jyle Griffith, ANUHCV 2003/0123 - Antigua & Barbuda

Grant v Edwards (1985) 36 WIR 182

Williams v Williams (1986) 39 WIR 140

Green v Green UK P.C. No. 39 of 2003

DAVID C. HARRIS
JUDGE
HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

[1] See para **"**37 (v)**"** of the ORDER above for the reason for the 30% deduction