

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV 0100/2008

BETWEEN:

LINETH WEBSTER

Claimant

And

CAROLYN GUMBS

(as Lawful Attorney for Bernice Stapleton, Executrix of the Estate of Percy Sylvester, deceased)

Defendant

Before: The Hon. Madame Justice Louise Blenman

Appearances:

Mr. Gerhard Wallbank and Ms. Merlanih Lim for the Claimant
Ms. Tara Ruan for the Defendant

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2010: December 8, 15
December 30
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JUDGMENT

[1] **BLENMAN, J:** Ms. Lineth Webster seeks to have the court declare her interest in property that was left by Mr. Percy Sylvester, deceased by Will, to Carolyn Gumbs. Alternatively she seeks to have the court assess the value of her contribution to the property. Ms. Carolyn Gumbs in the above capacity counterclaims and seeks a declaration that Ms. Webster has no beneficial interest in the property. She also seeks vacant possession of the property. Ms. Gumbs also seeks to have the caution that was placed against the property removed.

Background

- [2] Ms. Webster and Mr. Sylvester (deceased) had a relationship for several years which produced three children. The relationship appeared to have commenced around 1987 and lasted for several years, until his death. They lived in several rented properties. He also had a relationship with Ms. Carolyn Gumbs' mother Beatrice Gumbs and lived periodically with her.
- [3] In 1990, he acquired property described as Registration Section Cauls Pond Block 68915 B Parcel B upon which he constructed the home. From 1992, he and Ms. Webster lived together with their children in the property for various periods of time. For the most part, Ms. Webster and her children lived with him in the property, until his death in 2006. The property is registered in Mr. Percy Sylvester's name.
- [4] There are disputes as to whether Ms. Webster lived in the home with Mr. Sylvester continuously until his passing in 2006. It is not in dispute that at the date of his death to the date of trial Ms. Webster and her children continue to occupy the property.
- [5] Mr. Sylvester left the property by Will to Carolyn Gumbs and that Will was challenged by Ms. Webster's son, Mr. Allyndel Webster and the learned trial judge, as she then was, the Hon. Justice Madam George Creque, found in favour of the validity of the Will. This was in Claim No. AXAHCV2007/0060 Bernice Stapleton as Executrix of the Estate of Percy Sylvester.
- [6] Ms. Webster thereafter caused a caution to be placed on the property.
- [7] She has now filed this claim in which she says that she is entitled to a beneficial interest in the property and she seeks to have the court award her a minimum of 50% share in the property.
- [8] Ms. Carolyn Gumbs who is apparently entitled to benefit under the Will dated 30th October, 1995 and who is the Lawful Attorney of the Executrix of the Will denies that Ms. Webster is entitled to any share in the property.

[9] Also, Ms. Gumbs in her capacity as the lawful attorney had counter claimed against Ms. Webster for damages on the alleged basis that Ms. Webster had unlawfully and improperly caused a caution to be placed on the property. During the closing arguments, Ms. Gumbs indicated that she was no longer pursuing this aspect of her counterclaim.

[10] Further, Ms. Gumbs seeks an order that Ms. Webster vacates the property.

Issues

[11] The issues that arise for the court to resolve are as follows:

(a) Whether Ms. Webster is entitled to any share in the property

(b) If so, to what share is she entitled?

(c) Alternatively, whether Ms. Carolyn Gumbs in her capacity as the Lawful Attorney for Bernice Stapleton, Executrix for the Estate of Percy Sylvester, deceased is entitled to possession of the property.

Evidence

[12] Ms. Webster, her son Mr. Allyndel Sylvester and Mr. Calvin Freeman gave evidence on behalf of Ms. Webster. Ms. Gumbs and Mr. Keithroy Williams provided evidence on behalf of Ms. Carolyn Gumbs.

Claimant's Submissions

[13] Learned Counsel Mr. Wallbank asked the court to conclude that while the legal title to the property is in Mr. Sylvester's name, Ms. Webster is entitled to share in the beneficial interest in the property. Learned Counsel Mr. Wallbank said that a beneficial interest in property arises from a resulting or

constructive trust being created in favour of a person(s), under the law of equity. A beneficial interest arising from a resulting trust is created by virtue of a parties direct contribution towards the acquisition of the property. Such contributions include whole or partial payment of the purchase price, and making repayments on the loan which was procured in order to purchase the property. In such a case, the parties beneficial share of the property will be proportionate to his or her contribution towards its acquisition. See *Grant v Edwards* [1986] 1 Ch 638.

- [14] A beneficial interest arising from a constructive trust arises pursuant to a common intention between the parties, that such an interest should be accorded to a party(ies) notwithstanding that the party does not have legal ownership of the property. A constructive trust is often found in cases involving matrimonial or quasi-matrimonial property, in which the court has found that the wife or female partner to the relationship, has a beneficial interest in the property shared with the husband or male partner, despite the latter having sole legal ownership thereof. English common law has established that the general rule is to find both parties as having an equal beneficial interest. This rule may however be departed from depending upon the particular circumstances of each case. See *Abbott v. Abbott* (Privy Council Appeal No. 142 of 2005); *White v White* [2001] 1 AC 96). This rule has been applied in the Eastern Caribbean jurisdiction, as seen in the recent case of *Norman Jarvis v. Carmella Williams* ANUHCV 2008/0238.
- [15] Ms. Webster's evidence is that Mr. Sylvester was registered as the sole legal owner of the property and was the sole signatory on the loan agreement. Mr. Wallbank asked the court to accept Ms. Webster's evidence that she made both direct and indirect contributions to the acquisition of the property.
- [16] During cross-examination, Ms. Webster informed the court that she did not insist upon being a joint legal owner of the property, as she "trust[ed]" Mr. Sylvester and that his intention was to "buy the land for a home for [their] family." She was subsequently informed by a representative from the bank that she could not be a co-signatory on the loan agreement, as she and the deceased were not married. Ms. Webster also told the court that she could not recall the amount of the loan, or what the monthly repayments were. However, she was aware that these repayments were attached to the deceased's monthly salary. In her evidence, Ms. Webster said that both she and

the deceased had agreed that the latter's salary would be utilized towards repaying the loan, and her earnings would be used to pay the remaining household expenses and to maintain the children.

- [17] She was employed throughout the duration of her relationship with the deceased, and certainly since the acquisition of the property by the deceased. Ms. Webster worked two (2) jobs, and also took it upon herself to seek additional sources of income by selling cooked foods, vegetables and clothes. This enabled the deceased to focus on meeting the monthly loan repayments, as Ms. Webster's earnings were sufficient to maintain the entire household.
- [18] Ms. Webster also stated that the Mr. Sylvester had control of household income and that she would hand over her monthly earnings to him to be applied towards the expenses as necessary. This was confirmed by Ms. Webster's first witness, Mr. Allyndel Sylvester, who told the court during cross-examination that he had witnessed this on various occasions when Ms. Webster handed over her earnings to the deceased in his presence.
- [19] Further, when the deceased received half-pay from the year 2005 onwards until his death, she paid the shortfall of around US\$300.00 each month to ensure that the loan repayments were satisfied because the deceased's monthly income was now insufficient to meet these repayments.
- [20] Mr. Wallbank also referred the court to the fact that Ms. Webster also said that she had contributed towards the construction of the dwelling house. She contributed several palettes of blocks, utilized her brother's pickup truck to transport sand to the work site, physically assisted with the loading and unloading of the sand, and provided beverages and cooked food to the workers on the site. Ms. Webster's second witness, Mr. Calvin Freeman, confirmed during examination in chief that these contributions were made by her and in particular that he recalled Ms. Webster supplying between 10 and 15 pallets of blocks, the total number of pallets being required to build the house being about 30 pallets. In other words, Ms. Webster supplied in Mr. Freeman's recollection up to about the amount of building blocks for the house.

- [21] Learned Counsel Mr. Wallbank argued that Ms. Gumbs has failed to provide any evidence to challenge the assertions made by Ms. Webster in relation to her contributions above, it is sufficiently clear that Ms. Webster did make such contributions as she alleges, and that Ms. Webster does have a beneficial interest in the property arising out of a resulting trust by virtue of her direct and indirect contributions towards the purchase, acquisition and development of the property.
- [22] Mr. Wallbank urged the court to accept the evidence when Ms. Webster said that it had been the joint intention of herself and Mr. Sylvester deceased from the very outset, that the property would be acquired for the sole purpose of being the family home for them and their children, in order that they would not need to reside at rental accommodation any longer. Mr. Wallbank said that it was on this basis that Ms. Webster made the above contributions towards the construction of the dwelling house as stated above and undertook to seek several forms of employment and additional sources of income in order to facilitate the deceased in making the monthly loan repayments, as Ms. Webster was able to unilaterally maintain the household with her earnings.
- [23] In the circumstances, it is similarly clear that the common intention of the deceased and Ms. Webster was that the property was to be their family home. It is not disputed that Ms. Webster, the deceased and their children resided together at the property since around 1992 until the deceased's death in 2006, except for a very short intervening period of perhaps only a couple of weeks, the exact duration and precise details of which are ambiguous and inconclusive based on the evidence procured from both Ms. Webster, her son, and Carolyn Gumbs.
- [24] Mr. Wallbank learned counsel advocated that the alternative finding that Ms. Webster has a beneficial interest in the property under a constructive trust must be made on the facts *Grant v. Edwards* [1980] AC 638 *Abbott v Abbott* [2007] UK PC 53.
- [25] Mr. Wallbank said that where a beneficial interest is accorded under a resulting trust, the beneficiary's share in the property will be proportionate to his or her contributions towards the purchase or acquisition of the property. See *Grant v Edwards* *ibid*. Where such interest is accorded under a resulting trust, the general rule under *White v White* [2001] 1 AC 96 is that the

parties hold equal beneficial shares in the property, unless there circumstances which dictate that this rule should be departed from.

- [26] Mr. Wallbank told the court that aside from Ms. Webster monetary contributions towards the loan repayments from her monthly earnings, she also maintained the household and cared for their three (3) children. Further, during cross-examination, Ms. Webster second witness, Mr. Freeman told the court that Ms. Webster contributed between ten (10) to fifteen (15) palettes of blocks for constructing the dwelling house, and that a total of around thirty (30) such palettes were used to complete same. Therefore, Ms. Webster had in fact contributed materials towards constructing around half of the structure of the dwelling house, before any consideration is had to her other financial and "in-kind" contributions to the family's acquisition of their property.
- [27] Learned Counsel Mr. Wallbank's said that the nature and extent of Ms. Webster contributions towards the purchase, acquisition and development of the property as the family home, therefore necessitate that the general rule in *White v. White* be departed from in favour of Ms. Webster. With reference to the *Norman Jarvis* case, Ms. Webster should, in consideration of the totality of the circumstances, be accorded a beneficial share in the property of at least fifty percent (50%), and as high as seventy-five percent (75%).

Defendant's Submissions

- [28] Learned Counsel Ms. Tara Ruan urged the court to dismiss Ms. Webster's claim and give judgment for Ms. Gumbs in accordance with her counterclaim. Ms. Ruan said that the court (differently constituted) has already decided on the validity of the Will in this matter. What is now before this court is the determination of the issue whether or not a constructive trust exists in favour of Ms. Webster. Ms. Ruan said that there is no dispute that the legal owner now becomes the defendant, Ms. Gumbs. However, Ms. Webster must prove on her evidence that she could have derived some interest by virtue of a constructive trust.
- [29] The law on constructive trusts has been applied in the Eastern Caribbean in the cases:

See Privy Council Appeal No. 142 of 2005 *Lynn Abbott v. Dane Abbott* ibid. In that case The Privy Council enunciated a clear test in paragraph 4 of the decision:

“There are, of course, two separate questions: first, was it intended that the parties should share the beneficial interest in a property conveyed to one of them only; and second, if it was so intended, in what proportions was it intended that they share beneficial interest?”

- [30] Learned Counsel Ms. Tara Ruan said that Ms. Webster's evidence is unreliable, self-serving and she has failed to present the court with any credible evidence to show the deceased's intention as it relates to a share in the property. Ms. Ruan said that the court can find the deceased's intention from the fact that the deceased made a Will of the property to Ms. Gumbs, which Will was later found to be valid and subsisting. This Will was made in 1995.
- [31] Ms. Ruan said that Lineth Webster has not been entirely forthright with the court when she says that they lived as a family unit. She agreed that the deceased Mr. Sylvester had a violent temper. Ms. Webster said that they never lived apart (however this evidence was later contradicted by her son Mr. Allyndel Sylvester). When referred to the statement of claim, she said that the paragraph 5(c) which gave a time frame as an exception for when they lived together, was a mistake. She said that she knew Carolyn and Beatrice Gumbs but she did not admit that Mr. Percy Sylvester deceased had a relationship with Beatrice. She was aware that they were close friends.
- [32] She said she never asked Mr. Percy Sylvester to put her name on the property and he did not offer to put her name on the loan because the loan monies would be paid from Mr. Sylvester salary. She admitted that Mr. Sylvester salary was assigned to the loan. Ms. Webster was unable to tell the court the amount of the loan; the monthly payment amounts; costs of material and construction. She said they kept a joint US savings account but she did not recall the amount they saved and she did not provide the bank book or copy to the court.

[33] Ms. Ruan Learned Counsel said that Ms. Webster's evidence amounts to mere bald assertions as set out in paragraph 32 of the *Ogden Browne v Sally-Ann Browne* case. The court in that matter said as it related to the evidence that:

"The evidence lack specificity, quantification and inherent consistency sufficient to elevate these assertions from mere bald assertions to evidence satisfying the Civil Standard of Proof."

[34] Ms. Ruan said Mr. Allyndel Sylvester evidence appeared to be more forthright in that he accepted that there was a period in which the family lived separate and apart from Mr. Percy Sylvester deceased. He knew that Ms. Beatrice Gumbs and his father were close friends and he acknowledged that from his memory his father did not live with Ms. Beatrice Gumbs but did sleep a night at Beatrice's house. Ms. Ruan asked the court to infer that the deceased did in fact carry on a relationship with Ms. Beatrice Gumbs. Mr. Allyndel Sylvester agreed that his mother and father did have disputes over the relationship with Ms. Beatrice Gumbs.

[35] Learned Counsel Ms. Ruan argued that there is no evidence before the court to support the allegations made by Ms. Webster in her Statement of Claim. It is trite law that he/she who asserts must prove. Ms. Ruan said that on the balance of probabilities, there is no evidence of an intention to share an interest between the deceased and Ms. Webster. The court is not required to look at the second part of the test, that is, in determining the interest. The court would be guided by the nature of evidence accepted in cases in order to determine if there is a common intention.

[36] Ms. Ruan Learned Counsel finally argued the Ms. Webster has not satisfied the court that there was a common intention for her to share an interest. This was reinforced by the deceased making a Will and leaving the property to someone else. If, however, the court were to accept that there was an intention to share; and or that Ms. Webster made some contribution, Ms. Ruan said that any interest should be de minimis in light of no credible evidence being presented by Ms. Webster. In *Ogden Browne v Sally Browne* *ibid*. The court went as low as 10% and even in that case the court was presented with receipts showing income and time periods worked. While Ms. Webster

made allegations of her earnings, she did not present any of that evidence in her witness statement. As it stands Ms. Ruan maintained that there is no evidence before the court to support the allegations made by Ms. Webster that she contributed either directly or indirectly to the acquisition of the property and her claim for an interest ought to be dismissed.

Court's Analysis and Conclusions

- [37] The court has given very careful consideration to the evidence that was adduced in the claim. Also, the court gave deliberate attention to the very lucid and helpful submissions of both Learned Counsel in the matter.
- [38] Before stating the facts there are a few observations which should be made. In the court's view the success or failure of Ms. Webster's claim, to a large extent, turns on the quality of evidence that was presented on her behalf, in support of her claim. Most of this evidence was oral evidence. In fact, there was very little, if any documentary evidence, relevant to the case at Bar, that would assist in the resolution of the issues.
- [39] Let it be said straight away that, Ms. Webster on whose evidence, the claim relies to give it life, did not strike the court as being forthwright. On several occasions when faced with strenuous cross-examination by Learned Counsel Ms. Ruan, she was forced to resile from earlier positions that she had taken during the evidence-in-chief. To put it simply, the court is of the view that she was neither a credible or reliable witness. On several occasions she told the court various things with respect to the relationship that she shared with Mr. Sylvester which were patently untrue. One matter that comes to mind readily was when she said that she and the deceased never lived apart but under intense cross examination she recanted and was forced to admit that this was not true. Her son Mr. Allyndel Sylvester also indicated, during cross examination, that his mother and father lived apart.
- [40] In addition, Ms. Webster feigned lack of knowledge that the deceased, Mr. Percy Sylvester carried on a relationship with Ms. Gumbs' mother Beatrice Gumbs and that this caused friction between herself (Ms. Webster) and the deceased. The court did not believe her and was fortified in this view

when Ms. Webster's son who testified on her behalf, admitted that perhaps once or so his father slept at Ms. Gumbs mother's home to the displeasure of his mother. He also said that his mother and father had disputes over the relationship.

[41] Ms. Webster was very hostile in her demeanor during the cross examination. The court also attached very little weight to Ms. Webster's evidence in relation to the contributions she is alleged to have made to the acquisition and construction of the property. Her evidence was vague or tenuous at best. She simply did not paint a very good picture. Given the quality of evidence provided by Ms. Webster, her son Mr. Allyndel Sylvester in his attempt to corroborate her evidence was faced with a difficult task. In any event, given his very young age at the time of the relationship, coupled with the fact that he seemed not to have lived with his parents for much of the time his evidence provided very little if any or probative value. His evidence was obviously given for the purpose of fortifying his mother's claim. When Mr. Allyndel Sylvester sought to tell the court that he saw his mother give his father her money salary, the court having had the opportunity to see and observe the witness did not believe him. Mr. Allyndel Sylvester did not appear to have a close relationship with his deceased father. He too seemed very distant from his father Mr. Percy Sylvester, deceased.

[42] The third witness an elderly man Mr. Freeman knew very little about the financial details between Ms. Webster and Mr. Sylvester. However, he was unable to contain his animosity to Ms. Carolyn Gumbs. This was evident in the aggressive manner in which he gave his evidence during the cross examination and is unwarranted outburst at the conclusion of the matter. While all of those can be excused given his advanced years he was definitely biased in favour of Ms. Webster. He had an interest to serve and that was to ensure that she succeeded in her claim. Apart from the fact that his evidence had very little relevance to the issues that have been joined, given his obvious lack of objectivity the court was unable to attach any significant weight to his evidence. In any event he did not speak to any financial contributions that Ms. Webster made and could not say who paid for the concrete blocks.

[43] For the defence, Ms. Gumbs and her witness Mr. Keithroy Williams had very little to say in relation to Ms. Webster claim's in seeking to rejecting her alleged contributions.

- [44] Ms. Gumbs sought to have the court believe that she and her mother contributed to the construction of the property. The court does not believe her. The court has no doubt that Ms. Gumbs' mother may have assisted Mr. Sylvester but not in relation to his acquisition or construction of the property.
- [45] While the court has no doubt that Ms. Gumbs mother and the deceased Percy Sylvester lived together, periodically but not in the property in question. He was living a life of having two ladies, simultaneously.
- [46] Ms. Gumbs in her evidence-in-chief sought to embellish the facts by stating that she and her mother contributed both financially and physically to the construction of the property. This is also far from the truth, in the court's considered view. There is no doubt that Ms. Gumbs mother may have cooked and done other things for Mr. Sylvester. It bears stating that the court sought to carefully examine Ms. Webster and her son Mr. Allyndel Sylvester's evidence, and notes in passing that her son Mr. Allyndel Sylvester is the person who had challenged the Will in which his father, Mr. Percy Sylvester deceased had left the property to Ms. Gumbs. It bears repeating that the Learned trial judge, as she then was, Justice Janice George Creque held that the Will was valid.
- [47] Be that as it may, the following represent the facts:

Ms. Webster and Mr. Sylvester had a long standing relationship which produced three children. He was a police officer and was unmarried. Simultaneously, he had a relationship with Ms. Gumbs mother, Ms. Beatrice Gumbs. Their relationship started while Ms. Carolyn Gumbs was an infant. Ms. Carolyn Gumbs is now a grown person. During several periods of their relationship, Ms. Webster and Mr. Sylvester lived together at diverse places. However, their relationship was rocky due to the presence of the third party. This resulted in Ms. Webster at one time leaving the home she shared with Mr. Sylvester and living with her relatives. Their relationship was not exclusive since he remained friends with Ms. Beatrice Gumbs.

- [48] While the court accepts that Ms. Webster worked throughout their relationship and contributed to the maintenance of herself and children, the court does not for one moment believe that she gave Mr. Sylvester her salary as she and her son Mr. Allyndel Sylvester would have the court believe. Neither does the court accept, as Ms. Webster would have the court believe, that there was any agreement/common intention between herself and Mr. Sylvester about purchasing the land which forms part of the property or that it should be treated as the family's property.
- [49] The court has no doubt, based on the evidence including the documentary evidence that the title to the land that the property was purchased in 1990 by Mr. Sylvester in this sole name and using his finances. It is also equally clear that he obtained a loan towards this and enlisted the assistance of friends to construct the house on the land. He obtained another loan from a bank in his sole name to construct the house. Ms. Webster made no contributions to this.
- [50] There may be some truth in Ms. Webster's statement that she contributed drinks and food to the workmen, the court does not for one moment believe that she physically worked on the site. It is also accepted that Ms. Gumbs' mother also contributed food to the workmen. The court does not accept as true when Ms. Webster said that on completion of the home, Mr. Sylvester told her that it was "*the house for his family and children.*" There is no doubt that at one time having left the Police Force, Mr. Sylvester did two jobs. The court is unable to glean a scintilla of evidence on which it can be concluded that the home was treated as belonging to Ms. Webster and Mr. Sylvester or as belonging to them beneficially. Mr. Sylvester was a man who lived two lives apparently with "*two wives.*"
- [51] The court is fortified in this view when one looks at the evidence in the round: Mr. Sylvester obtained the loan in his sole name and he applied monies from his monthly income towards repaying the loan. There may be no doubt that while Ms. Webster and Mr. Sylvester may have moved in the home around 1992 and lived in it for the most part until his death in 2006. It is equally clear that all of this time he was still having a relationship with Ms. Carolyn Gumbs' mother and spent several nights at her home.

- [52] What is noteworthy, is that Ms. Webster's evidence is that sometime in 1999 she came across a Will dated 30th October 1995 which she believed was made by Mr. Sylvester in which he purported to leave all of his property to Ms. Gumbs. On Ms. Webster's case, she did not bring this up with Mr. Sylvester since he had a violent temper and she was afraid that he would accuse her of rummaging through his things. Something as important as this given her assertion that he had expressly told her that the property was the family home one would have expected at the very least for her to confront him on the matter.
- [53] Ms. Webster says sometime later, that she witnessed Mr. Sylvester taking the Will out and tearing it up. It is passing strange that she would seek to raise this matter again. In any event, this bit of evidence is properly objected to by Ms. Ruan since the Learned Justice George Creque, as she then was, (in the previous proceedings in which the validity of the Will was challenged) had roundly rejected this bit of evidence.
- [54] Moving along, Ms. Webster said that herself and Mr. Sylvester never spoke about the Will again. It was only after his death in 2006 that the Will was brought to her attention by Ms. Bernice Stapleton who is Mr. Sylvester's sister.
- [55] Taking into consideration all of the facts as stated above the court has no doubt that Mr. Sylvester always treated and intended the property to be his own. This is borne out by the fact that a mere three years after completing the construction of the house and moving into the house he makes a Will leaving the entire property to Ms. Gumbs. He goes further in the Will and says that if Ms. Carolyn Gumbs were to die he wanted her relatives to get it.
- [56] Since From as early as 1995, a mere few years after, even on her, Ms. Webster's evidence made a Will leaving the property to Ms. Gumbs, he clearly did not intend for Ms. Webster to have any share in the property.
- [57] With respect, the court states Ms. Webster having painted such a poor picture (before the court) in relation to her credibility and reliability as a witness, the court is hard pressed to accept or believe her when she said that she purchased all of the furniture. She did not provide the court with any

evidence to corroborate these assertions. Similarly, Ms. Webster told the court that she and Mr. Sylvester has a joint US dollar account, yet in the face of such a serious challenge to her interest in the property she has not provided the court with a scintilla of evidence to buttress her position. It should be very easy for Ms. Webster to obtain supporting documentation from the bank, after all it is a mere few years since Mr. Sylvester passed.

[58] Taking all of the circumstances into account, regrettably the court has to conclude that Ms. Webster is not truthful not a reliable witness.

[59] In relation to the blocks that Ms. Webster said that she contributed given the court's assessment of her evidence, even if she did purchase some blocks which the court does not accept as the true position, it is clear that this contribution is so small as to be de minimis. The court treats this bit of evidence with caution and attaches very little weight to this self serving evidence. Mr. Freeman's evidence could not corroborate her story since he did not know who purchased the blocks. He was also discredited as a witness.

[60] As stated earlier, there is no doubt that Ms. Webster worked at several jobs to assist to take care of herself and her children financially and that she made financial contributions to the maintenance of her family. She also purchased household items for their use. The court does not for one minute downplay the fact that Ms. Gumbs worked and contributed financially to the maintenance of her children or that she bought various items for the home. All of these things however were not the result of any shared of common intention that the property would beneficially belong to herself and Mr. Sylvester.

[61] The court is of the considered opinion that even after Ms. Gumbs and her children moved into the property with Mr. Sylvester, in 1992 sometime thereafter they moved out and subsequently rejoined him. There is no doubt that Mr. Sylvester and Ms. Webster shared a very rocky relationship. This was very likely because he had a long standing relationship with Ms. Gumbs' mother, as Mr. Allyndel Sylvester told the court.

- [62] It is very clear that for the most part of the relationship between Ms. Webster and Mr. Sylvester deceased, he carried on a simultaneous relationship with Ms. Gumbs mother. By way of emphasis, the court accepts that during the subsistence of relationship with Ms. Webster, Mr. Sylvester was able to live with Ms. Gumbs mother, also.
- [63] This brings the court now to apply the relevant legal principles to the facts.
- [64] A resulting trust may arise at the time the acquisition of property where it is shown that a party has made a substantial contribution to its acquisition or its improvement in circumstances where the court may reasonably infer a common intention on the part of the legal owner that by reason of such contribution, the legal owner is to hold the property on a resulting or constructive trust in favour of the other party to the extent of that party's contribution.
- [65] There is no doubt that Ms. Webster earned during the relationship with Mr. Sylvester equally, the court accepts that Ms. Webster contributed to the expenses of providing food for the family and purchased various items for them from her income. The important question is whether these contributions entitled her to a share in the property (it must be noted that she lived in the home rent free) the court is not of the respectful view that Ms. Webster provided the court with any credible evidence that she contributed either directly or indirectly to the acquisition of the property or to the construction of the house. The evidence which is reliable points to the contrary; apart from her bald assertions she has provided the court with no proof in order to substantiate her allegations.
- [66] Even though Ms. Webster sought to persuade the court that she gave Mr. Sylvester her salary and that he took care of the finances and paid the bills, the court is unconvinced about the veracity of this, given the entirety of their relationship. It must be reiterated that Ms. Webster knew that Mr. Sylvester had a long standing relationship with Ms. Gumbs' mother, this caused friction in their relationship. This was so even though she, during cross examination, sought to convey another impression. Her son Mr. Allyndel Sylvester contradicted her evidence on this aspect and I believe him.

In this context, the court does not believe her when she said that she gave him her entire salary, particularly since the court has already concluded that their relationship was so strained that at least on one occasion she left the home taking her children with her.

- [67] The court finds the decision of **Button v Button** [1968] 1 All ER 1060 very instructive. Lord Denning stated *“that a 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 painting and decorating. Those are the sort of things that a wife does for the benefit of the family without altering title to, or interest in the property.”*
- [68] Also, the court finds very helpful the enunciations in **Burns v Burns** [1994] 1 All ER 244 in which Fox LJ stated *“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 existing property rights of either of them.”*
- [69] In the case at Bar, there is no question of a resulting trust arising in favour of Ms. Webster in so far as there is no credible evidence upon which it can be concluded or inferred that the parties had a common intention that Ms. Webster should have a beneficial interest in the property. See **Petitt v Petitt** *ibid*, **Gissing v Gissing** *ibid* and **Lloyds Bank Plc v Rosset** [1991] 1 AC 107. It bears repeating that there is no credible or reliable evidence that Ms. Webster contributed either directly or indirectly to the acquisition of the land or property.
- [70] The case at Bar, is clearly distinguishable from **Grant v Edwards** [1980] AC 638. In that case it was held that where a couple chose to set up home together and a house was purchased in the name of one of the parties, equity would infer a trust if there was a common intention that both should have a beneficial interest in the property and the non-proprietary owner, whether directly or indirectly referable to the purchase of the property, that could only be explained by reference to a person acting on the basis of having a beneficial interest in that property.

[71] Also, the case at Bar is to be distinguished from that of *Norman Jarvis v Carmella Williams* *ibid.* In the latter case there was credible evidence upon which the court concluded that the parties had a common intention in relation to the property based on a sharing of resources and a pooling of resources among other things.

[72] The development of the law continued and cumulated in the modern and recent case of *Abbott v Abbott* [2007] UKPC 53. In this case the Privy Council clearly stated that the constructive trust is generally the more appropriate tool of analysis in most matrimonial cases. Baroness Hale in 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.*”

[73] Baroness Hale remarked that the law has moved on and she further said “*If the question really is one of the parties “common intention” we believe that there is much to be said for adopting what has been called a holistic approach to quantification, undertaking a survey of the whole course of dealing between the parties and taking into account of all conduct which throws light on the question what shares were intended.*”

[74] Baroness Hale further said that the fundamental question to be determined is :

“Whether independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to the acquisition, or exceptionally at some time later date, been any agreement, an arrangement or understanding reached between them that the property is to be shared beneficially.”

[75] Baroness Hale quoted from Lord Bridge in *Rossett v Rossett* [1991] AC 107 at 132-3 where Lord Bridge said:

“the finding of an agreement or arrangement to share in this sense can only, I think be based on evidence of express discussions between the parties, however imperfectly

remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she acted to his or her own detriment and significantly altered his/her position in reliance on the agreement in order to give rise to a constructive trust."

- [76] Applying the above principles to the case at Bar, the court is of the considered opinion that Ms. Webster has failed to meet the threshold to establish a common intention. The facts of the case prove to the contrary. The conduct of the parties over the years and during their course of dealing does not suffice to enable the court to infer/impute any common intention that Ms. Webster was to have a beneficial interest in the property.
- [77] To put the matter beyond doubt, the court having examined the course of conduct of the parties in relation to the property is convinced that there was no shared intention actual, inferred or imputed. Due to the far reaching nature of this decision, the court would proceed to scrutinize the evidence very carefully and further.
- [78] It is evident that Mr. Sylvester never intended nor treated Ms. Webster as having any beneficial interest in the property. In addition, as alluded to given the totality of circumstances the court does not accept that he ever stated that the home was for his family or for his children. There is no basis for the court inputting or inferring a common intention.
- [79] It is pellucid that Mr. Sylvester never intended for the property to be treated as the family home. This is borne out by the way in which he conducted his affairs. Of equal importance, is the court's disbelief that he ever told either Ms. Webster or her son Mr. Allyndel Sylvester that the property was the family's home or words of that nature. It is also very questionable that Ms. Webster contributed to the loan for the house just before Mr. Sylvester's death. It is obvious that he harboured a healthy dose of dislike for her and wanted to exclude her from his property.
- [80] The court digresses to state that it was evident during Mr. Allyndel's testimony that he did not have a close/good relationship with his father. He like his mother appeared to be very upset, while

testifying. Mr. Allyndel Sylvester was a bit dismissive, in his demeanour, of his parents' relationship.

- [81] The court places very little store on Mr. Allyndel Sylvester's evidence when he said that when he was around six years old his father said that he had built a house which he told them was *"for his family."*
- [82] The court finds noteworthy that in paragraph 9 of his witness statement Mr. Allyndel Sylvester states quite clearly *"I am extremely upset that we have been told to vacate the property by what I believe to be, Ms. Gumbs legal representatives, in seeking to enforce the terms of the Will."* Much of what Mr. Allyndel Sylvester told the court was influenced by his state of upset. Therefore, the court is able to attach very little weight to what he said.
- [83] There is no doubt that at all material times Mr. Sylvester treated the house as his. He obtained the loans from the bank, to purchase the land and thereafter to construct the house, in his own name. He alone was responsible for the repayment of the loan. He enlisted the assistance of his friends to construct the home on weekends.
- [84] The court is fortified in its view that Mr. Webster never intended or shared any common intention for Ms. Webster to benefit by the very fact that a few years after moving onto the property in 1992 he made the Will in 1995 leaving the property to Ms. Carolyn Gumbs. It is evident that at that very early stage and at least eleven years before his demise he intended Ms. Gumbs and not Ms. Webster and her children to get from the property.
- [85] It is passing strange that Ms. Webster would have the court believe that this is the property that Mr. Sylvester had agreed even before it was constructed was the family home, yet when she came upon the Will in 1999 in which he left the property to Ms. Gumbs she (Ms. Webster) said nothing to him about it. Even though she said that he would always say that *"the house is for my family, my children."* Interestingly, Ms. Webster seeks to have the court believe that at some later stage, in 1999 Mr. Sylvester tore up the Will and said *"I must be stupid to leave my property to a stranger. The house belongs to my family."*

- [86] It bears repeating that the issue of whether or not the Will was torn by Mr. Sylvester was the subject matter of Claim No. AXAHCV 0060/2007 Bernice Stapleton as Executrix of Mr. Percy Sylvester in which the validity of the Will was tested. In that case the Learned trial judge Justice George Creque, as she then was, made findings adverse to those assertions and upheld the validity of the Will. This court as presently constituted is of the considered view that this matter is the subject of issue estoppel and the court cannot properly reopen the issue. The court will therefore on the basis of comity take notice of the previous judgment. Even if the court were wrong in so concluding, this type of evidence is not the quality of evidence on which the court can rely on in order to determine whether there was a common intention. Ms. Webster has proven herself to be a less than credible witness, to say the least, and the court finds it difficult to attach any significant weight to her evidence.
- [87] The court digresses to state that Mr. Sylvester was a man who lived two lives and while he had three children by Ms. Webster he seemed to have preferred Ms. Carolyn Gumbs. This can be the only reason why a mere few years after moving into the home with Ms. Webster he left Ms. Gumbs the property by Will. It must be borne in mind that he had a continuing relationship with Ms. Gumbs' mother from the time Carolyn was about 5 years old.
- [88] In view of the totality of circumstances, the court is far from convinced that Mr. Sylvester and Ms. Webster did everything as a team and operated as a family unit. In the court's respectful view Mr. Sylvester had two family units. He treated and intended the beneficial interest in the property to inhere in himself. There is no basis upon which the court can impute or infer anything else.
- [89] In view of the premises Ms. Webster has failed to establish her claim to a beneficial interest in the property.
- [90] In so far as Ms. Webster has failed to establish her claim to a beneficial interest in the property and in view of the counterclaim, the court has no doubt that Ms. Carolyn Gumbs, in the above capacity, is entitled to vacant possession of the property.

[91] Given the fact that Ms. Webster lives in the property with her family the court, on compassionate and just grounds, is of the view that she should be given a period of time to vacate which is fair and reasonable, in all of the circumstances.

[92] The court is of the considered opinion having listened to the submissions of both Learned Counsel Ms. Ruan and Ms. Lim, that a reasonable time in which Ms. Webster should vacate the property is on or before 15th February 2011. The court so orders.

[93] The court also orders that caution that was placed in the Register against the property be removed by the Registrar of Land forthwith.

Conclusion

[94] In view of the premises, Ms. Lineth Webster's claim against Carolyn Gumbs (as Lawful Attorney for Bernice Stapleton, Executrix for the Estate of Percy Sylvester (Deceased)) is dismissed.

[95] In relation to the counterclaim Ms. Carolyn Gumbs, as Lawful Attorney for Bernice Stapleton, Executrix for the Estate of Percy Sylvester, deceased is entitled to vacant possession of property situate at Cauls Bottom, Anguilla and described as Registration Section Cauls Pond Block 68915B Parcel 85, on or before 15th February, 2010.

[96] The Registrar of Lands is hereby directed to remove the caution that was placed in the Register in relation to the property.

[97] Costs are awarded in the sum of US\$5000.00.

[98] The court's expresses its sincere appreciation to all Learned Counsel for their assistance.

Louise Esther Blenman
Resident High Court Judge
Anguilla