

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

CLAIM NO: ANUHCV 2008/0480

BETWEEN:

JANET COCHRANE

Claimant

and

VOLMER COCHRANE

Defendant

Appearances:

Dr. David Dorsett for the Claimant
Ms. Sherrie-Ann Bradshaw for the Defendant

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2010: November 16
2011: May 13
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JUDGMENT

[1] **MICHEL, J.:** The parties to this case are Antiguan nationals resident in Canada. They met in Antigua in 1972 at a time when the Claimant, Janet Cochrane, was an unmarried mother of one child and the Defendant, Volmer Cochrane, was married and was the father of two children. In 1974 the Claimant migrated to Canada and the Defendant followed in 1976. In November 1977, with the Defendant apparently now divorced, the Claimant and the Defendant got married to each other in Canada. Two children were born to the parties in the course of their marriage and various properties were acquired by them. The properties acquired by one or both of the parties in the course of the marriage included boats,

vehicles, businesses, houses and lands. The parties separated in August 2005 and in 2007 the Claimant instituted divorce proceedings in Canada.

[2] By the time that the divorce proceedings were commenced some of the properties acquired by one or both of the parties had been disposed of - whether forcibly or voluntarily - leaving the parties then with the following properties as their principal assets: (1) the matrimonial home in Mc Murray in the province of Alberta in Canada; (2) a house in Calgary in the province of Alberta in Canada; (3) pension funds and related entitlements in Canada; and (4) about thirty acres of land in Antigua and Barbuda registered as parcels numbered 40, 41 and 42 in block number 52 1785A in the registration section of Christian Valley and parcels numbered 87, 88, 89 and 92 in block number 51 1984A in the registration section of Bendals. The houses in Canada were apparently in the joint names of the parties, the pension funds were apparently in their separate names, while the land in Antigua and Barbuda was in the sole name of the Defendant.

[3] In April 2007, after the commencement of the divorce proceedings, the Claimant caused a caution to be registered in Antigua and Barbuda as the claimant of an equitable and beneficial interest in the land in Antigua and Barbuda registered in the name of the Defendant.

[4] In July 2007 the parties executed Minutes of Settlement in their divorce proceedings towards settlement of their property rights, but excluded from the settlement the land in Antigua and Barbuda, leaving it to the court in Antigua and Barbuda to resolve any dispute between the parties concerning same.

[5] In August 2008, with the parties now divorced, the Claimant filed the current proceedings in the High Court in Antigua and Barbuda claiming the following relief against the Defendant:

1. A declaration that the following properties registered in the name of the Defendant are beneficially owned by the parties in equal shares or alternatively in such shares as the Court may determine -

Registration Section	Block	Parcels
Christian Valley	52 1785A	40, 41, and 42
Bendals	51 1984A	87, 88, 89, and 92

2. An order that the property be sold and that the proceeds of sale be divided between the Claimant and Defendant in such shares as the Court may determine;
3. Alternatively, an order that the Defendant enter into arrangements upon security satisfactory to the Claimant to repay to the Claimant such shares as the Court may determine;
4. Such further or other relief that the court deems just;
5. Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act;
6. Costs.

[6] The Defendant joined issue with the Claimant on her claim and counterclaimed against the Claimant for the following relief:

1. An order that the Claimant is not entitled to a half interest or any interest in the lands registered as -

Registration Section	Block	Parcels
Christian Valley	52 1785A	40, 41, and 42
Bendals	51 1984A	87, 88, 89, and 92

2. A declaration that the legal and beneficial interests in the said properties are vested solely in the Defendant;
3. A declaration that the Cautions lodged by the Claimant on the said properties on the 30th day of April 2008 are wrongful;
4. Damages for wrongful caution;
5. An order directing the Registrar of Lands to remove the said caution;
6. Such further or other relief;

7. Interest pursuant to Statute;
8. Costs.

- [7] A Case Management Order was made by the Master on 11th January 2010 setting out the dates by which various steps in the proceedings were to take place. Some of these dates were adjusted by Orders made by me on 7th May, 11th June and 2nd July 2010, with the final Order setting the trial for 16th November 2010.
- [8] At the trial, the Claimant gave evidence on her own behalf and called no witnesses, while the Defendant gave evidence on his own behalf and called one witness, Donald Hill.
- [9] The Claimant's case, as per her pleadings, her witness summary and her oral testimony, was to the effect that in the course of the marriage between the Defendant and herself the disputed land was purchased in Antigua and Barbuda in the name of the Defendant, but with contributions by the Claimant towards the purchase of the land. She averred that the land was acquired for the purpose of establishing a retirement home for the parties in Antigua, that it was paid for with the combined funds of the parties, including funds from her employment earnings, and that it was the common intention of the parties that the Claimant would have a substantial interest in the property.
- [10] The Claimant alleged that the process of purchasing the disputed land commenced between 1980 and 1982 when the Defendant and herself, along with two of their children, visited the land and visited its owners, Mr. and Mrs. Goodwin. She alleged that the purchase price of the land was settled at EC\$200,000 and it was agreed that a deposit of CDN\$5,000 would be transmitted to Mr. Goodwin upon their return to Canada and that the balance of the purchase price would be paid in installments over time. She further alleged that the purchase of the land was completed in the late 1990s.
- [11] The Defendant's case, as per his pleadings, was to the effect that he started negotiations towards the purchase of the land since 1974, initially with a real estate agent, and then in 1976 he arrived at an agreement with the owner of the land to purchase it from him for

\$200,000. He averred that, pursuant to this agreement, over a period of eight years he made payments towards the purchase of the land from the owner, Mr. Goodwin. He averred that the purchase price of the land was derived solely from the severance pay he received from West Indies Oil Company, company thrift benefits and savings over the years prior to his marriage to the Claimant. He averred that the land was acquired solely at his expense and for his sole use and for the benefit of his children and not for the purpose of returning to or retiring in Antigua. He denied there ever was a common intention that the Claimant would have an interest in the land and that the Claimant contributed in any way whatsoever to the land to her detriment.

[12] This version of the events which transpired with the purchase of the disputed land was repeated in part in the witness statement and the testimony of the Defendant, although there were some differences. For instance, from the evidence it emerged that the period during which the land was purchased from Mr. Goodwin was between December 1982 and September 1991, which is during the course of the marriage between the Claimant and the Defendant and several years after the Defendant's employment with West Indies Oil Company had been severed and any severance payments and other terminal benefits would have been received by him.

[13] The Defendant brought his long-standing friend, Donald Hill, to give evidence on his behalf. In his witness statement, Mr. Hill stated that in or about 1983 he and the Defendant entered into a business partnership agreement to purchase 40 acres of land offered for sale by Basil Goodwin for \$200,000 pursuant to which he contributed sums totaling about CDB\$15,000 towards the purchase price. He further stated that as the years passed he suffered financial difficulties and had to terminate the partnership agreement and the Defendant refunded him the CDN\$15,000 he had contributed and the Defendant continued to make the payments on his own. Mr. Hill testified under cross examination that he and the Defendant entered into an agreement for the two of them to purchase the land from Mr. Goodwin and to build homes on the land, which testimony was at variance with that of the Defendant that he had agreed to and had purchased the land

from Mr. Goodwin for his sole use for agricultural purposes and for the benefit of his children.

[14] The most telling bit of evidence in the case though came from the handwritten notes of the Defendant disclosed by the Claimant in her Amended List of Documents filed on 10th June 2010 and deemed by the Court (by Order dated 11th June 2010) to have been properly filed. Although at the commencement of the trial and again at the time when the Claimant gave evidence of having seen the Defendant write the handwritten notes disclosed, Counsel for the Defendant sought to take objection to the document being admitted into evidence, the fact is that the document was disclosed on 10th June 2010 and no notice was at any time served by the Defendant that the document had to be proved at trial. In accordance with Rule 26.18 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, therefore, the Defendant is deemed to have admitted the authenticity of the document and cannot at the trial seek to impugn it.

[15] The Court accordingly accepts as authentic the handwritten notes of the Defendant disclosed by the Claimant evidencing the acknowledgement by the Defendant that the land in Antigua and Barbuda was intended to be the joint property of the Claimant and the Defendant and thus confirming the common intention of the parties to this effect. The Court also preferred the evidence of the Claimant to that of the Defendant on the issue of the Claimant having contributed to the purchase of the disputed land. The Defendant himself testified that the Claimant's funds were co-mingled with his, thus giving credence to the Claimant's evidence that payments towards the purchase price of the land were made from the combined earnings of the Defendant and herself. The Defendant's evidence that he paid for the land between 1982 and 1991 from the severance pay and other termination benefits he received from the termination of his employment with West Indies Oil Company in 1976 and from his accumulated savings before his marriage to the Claimant in 1977, which suggests that he had these funds sitting idly for between six and fifteen years, while he took loans to finance other purchases and might even have suffered loss of property due to lack of funds, did not come across as being very credible and the Court did not believe his evidence in that regard.

[16] In terms of the quantum of the Claimant's entitlement, the evidence reveals that although there was a significant disparity in the earnings of the Claimant and the Defendant throughout their thirty-year marriage, with the Defendant earning significantly more than the Claimant, yet when they came around to separating their property in Canada - whether it was their matrimonial home in Fort Mc Murray, their other house in Calgary or their pension fund entitlements – they settled them on the basis of equal entitlement.

[17] In keeping therefore with the decision of the Judicial Committee of the Privy Council on appeal from the Court of Appeal of the Eastern Caribbean Supreme Court in the Antigua and Barbuda case of *Abbott v Abbott*¹, this Court accordingly declares that the land in Antigua and Barbuda registered as parcels numbered 40, 41 and 42 of block number 52 1785A in the registration section of Christian Valley and parcels numbered 87, 88, 89 and 92 in block number 51 1984A in the registration section of Bendals (which land is registered in the name of the Defendant only) is beneficially owned by the Claimant and the Defendant in equal shares. The Court also orders that the Defendant shall enter into arrangements upon security satisfactory to the Claimant to pay to the Claimant the value of her half share in the land, failing which the land shall be subdivided and the Defendant shall transfer a moiety thereof to the Claimant or, alternatively, the land shall be sold and the proceeds of sale be divided equally between the Claimant and the Defendant.

[18] The Defendant's counterclaim is dismissed.

[19] The Claimant, as the successful party in this suit, is entitled to her costs to be paid by the Defendant in an amount to be agreed by the parties or assessed by the Court.

[20] The following cases were cited to the Court by Counsel for the parties and considered by the Court:

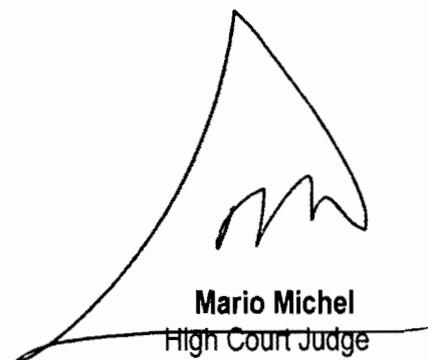
By Counsel for the Claimant –

¹ (2007) 70 WIR 183

1. Abbott v Abbott;¹
2. Laskar v Laskar;²
3. May & Butcher v The King;³
4. Oxley v Hiscock;⁴
5. Stack v Dowden;⁵

By Counsel for the Defendant –

1. Petit v Petit;⁶
2. Gissing v Gissing;⁷
3. Mc Farlene v Mc Farlene;⁸
4. Grant v Edwards;⁹
5. Lloyds Bank PLC v Rosset;¹⁰
6. Stack V Dowden;⁵
7. Oxley v Hiscock;⁴
8. Drake v Whipp;¹¹



Mario Michel
High Court Judge

² [2008] 1 WLR 2695

³ [1934] 2 KB 17

⁴ [2005] Fam 211

⁵ [2007] 2 AC 432

⁶ [1946] 2 All ER 384

⁷ [1970] 2 All ER 780

⁸ [1972] NI 59

⁹ [1986] 2 All ER 426

¹⁰ [1991] 1 AC 107

¹¹ [1996] 1 FLR 826