

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV0062/2009

BETWEEN:

LOIS DUNBAR

Claimant

And

PAUL S. WEBSTER

Defendant

Before: The Hon. Madame Justice Louise Blenman

Appearances:

Mrs. Cora Richardson-Hodge and Ms. Sherma Blaize for the Claimant
Ms. Jean M. Dyer and Ms. Michelle Smith for the Defendant

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2010: November 22
2011: May 27
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JUDGMENT

- [1] **BLENMAN, J:** This is a claim by Ms. Lois Dunbar against Dr. Paul S. Webster for a declaration that she is entitled to a beneficial interest of 55 percent in the property described as Registration Section West Central Block 28309 B Parcel 98; 50 percent beneficial interest in the Mercedes Benz and 100 equitable percent interest in personal items she left behind in the Anguilla house.
- [2] Also, Ms. Dunbar seeks an Order that the Registrar of Lands be directed to rectify the register to reflect that she has a 55 percent interest in Parcel 98.
- [3] Dr. Webster has counterclaimed and he asks the court to find that Ms. Dunbar is not beneficially entitled to any interest in Parcel 98, the Mercedes Benz or any personal items. He also seeks

damages against Ms. Dunbar alleging that she has wrongfully caused a Caution to be placed against Parcel 98. He also seeks an order that the Caution be removed.

Background

- [4] Ms. Dunbar says that she and Dr. Webster were married and during their relationship they purchased Parcel 98 and the Mercedes Benz, both of which were registered in his name even though she contributed financially to their acquisition. She says they had the common intention that they would own the properties beneficially.
- [5] Ms. Dunbar also says, in the alternative, that there was an agreement and/or understanding between herself and Dr. Webster that she and Dr. Webster, based on their views that they were married, invested monies in the purchase of Parcel 98 and the construction of the home on Parcel 98. At the time of the acquisition of Parcel 98, it was agreed, that it should be registered in Dr. Webster's name until such time when she became a believer of Anguilla. She subsequently became a believer and when she asked Dr. Webster to execute the deed of transfer he refused to do so. She says that she is entitled to a 55 percent beneficial interest in Parcel 98.
- [6] Ms. Dunbar also claims 50 percent share in the Mercedes Benz car that was bought in Dr. Webster's sole name and which he gave to his sister. She contributed the sum of US\$15,278.36 to the purchase price and it was their agreement that she was to be beneficially entitled to 50 percent interest in the vehicle.
- [7] Also, Ms. Dunbar seeks an Order that she is beneficially entitled to 100 percent interest in personal property which she says remained in the house in Anguilla to the total value of US\$81,250.00. In her statement of claim she lists the property in issue as follows:

"Jewelry valued approximately US\$3,000.00; two complete bedroom sets valued US\$7,500.00; three persian rugs valued US\$16,500.00; kitchen items totaling US\$1,300.00; a Sony Viao laptop valued at US\$1,200.00; Sony Xbox and 10 games

valued at US\$750.00; approximately 60 DVD's valued US\$1000.00; furniture and fixtures valued US\$50,000.00, a total sum of US\$81,250.00.

[8] In the alternative, Ms. Dunbar seeks an Order for the court to compel Dr. Webster to pay her the sum of US\$81,250.00, which she says represents her equitable interest in the items.

[9] She also seeks costs.

[10] Her claim is strenuously opposed by Dr. Webster. He says that she is not beneficially or otherwise entitled to any share whatsoever in Parcel 98 or the Mercedes Benz.

[11] Dr. Webster says that Parcel 98 and the home that is built on it, and in which Ms. Dunbar seeks an interest, were acquired by his sole efforts; in fact, Ms. Dunbar never played any role in their acquisition, neither did she financially or otherwise contribute to his acquisition of them. They were both obtained through the use of his sole funds and there was never any common intention for her to acquire a beneficial interest in them.

[12] He says that the Mercedes Benz was owned by him solely, he having bought it with his exclusive funds. He denies that Ms. Dunbar contributed either directly or indirectly to its acquisition. He says that he gave the vehicle to his sister. He maintains that he was its sole legal and beneficial owner.

[13] Dr. Webster says that the home in Anguilla was furnished with his funds, save for a carpet which Ms. Dunbar purchased for the sum of US\$300.00 and in respect of which she was reimbursed. She is not entitled to any beneficial interest in the items that are in the home in Anguilla.

[14] He says that Ms. Webster has improperly caused a Caution to be placed against Parcel 98. Dr. Webster has counterclaimed against Ms. Dunbar and seeks a declaration that she has no beneficial interest in Parcel 98. He also seeks an Order that Ms. Dunbar has no beneficial interest in the Mercedes Benz. He requests that the court directs the Registrar of Lands to remove the Caution. He also seeks damages and costs against Ms. Dunbar.

Issues

- [15] The issues that arise for the court to resolve are as follows:
- (a) Whether Ms. Dunbar is entitled to a beneficial or equitable interest in Parcel 98.
 - (b) If so, what is the extent of her interest.
 - (c) Whether Ms. Dunbar is entitled to any share or beneficial interest in the Mercedes Benz, and if so, to what extent.
 - (d) Whether Ms. Dunbar is entitled to be compensated in the sum of US\$81,250.00 for items allegedly left in the Anguilla home.
 - (e) Whether the court should make an Order directing the Registrar of Lands to remove the Caution that has been placed on Parcel 98.
 - (f) Alternatively, whether Ms. Dunbar has wrongfully caused a Caution to be placed on Parcel 98.
 - (g) If so, whether Dr. Webster is entitled to be compensated for Ms. Dunbar having caused the Caution placed on Parcel 98.

Evidence

- [16] Ms. Dunbar provided the court with evidence on her own behalf and was cross-examined at length. Dr. Webster testified on his own behalf and was vigorously cross-examined. Mr. Duncan Stott testified on behalf of Dr. Webster. The parties also placed before the court agreed bundles of documents together with bundles of documents that were not agreed.

Court's Analysis and Conclusions

[17] The court has reviewed the evidence that was adduced by each party in chief and has given particular consideration to the evidence that was elicited during the cross examination that sought to test it. The court has given very careful consideration to the lucid and comprehensive submissions of learned Counsel.

[18] The court has no doubt that neither Ms. Dunbar nor Dr. Webster was as candid as they ought to have been. They both stretched the truth considerably in order to buttress the respective position that each has taken. Neither of them painted a good picture and the credibility and reliability of both of them left much to be desired. Be that as it may, the court was nevertheless able to distill the facts from the very interesting oral and documentary evidence they produced. The documentary evidence was very helpful. Mr. Stott, though seeking to appear neutral, has clearly taken the side of Dr. Webster and has an interest to serve. The court is fortified in its view having listened to him during cross examination and reviewed his evidence in cross-examination. The documentary evidence that chronicled the communication between himself, Ms. Dunbar and Dr. Webster was of tremendous assistance.

Facts

[19] The following represent the facts as found by the court or otherwise agreed or not in dispute by the parties:

Dr. Webster is a born Anguillian, an American citizen, and a medical doctor. He spent several of his adult years living in the United States of America. He worked with hospitals and different companies as an anesthesiologist. Ms. Dunbar is a Jamaican by birth, an American citizen, and a believer of Anguilla. She is a registered nurse by profession and past owner of a medical business in the United States of America by the name of MEDREC Inc. The parties had a long standing relationship stretching over ten years. Prior to meeting Dr. Webster, Ms. Dunbar owned her own home in Northern Virginia which she eventually sold to relocate with Dr. Webster to Tampa in

Florida where they set up home as a family. In 1995 they gave birth to a baby girl (this aspect of the facts is not strictly relevant to the issues at bar but is included to provide context to their relationship and course of dealings). The parties operated as a family unit from 1995 (at the latest) until their relationship faltered some ten years later.

[20] It appears that Dr. Webster and Ms. Dunbar went through a marriage on 29th June 1996. However, it seems as though at that time of the marriage to Ms. Dunbar, he was in a common law marriage with Ms. Ryan. The court in the District of Columbia, in November 1996, held that he was married to Ms. Ryan. It therefore followed that when he married Ms. Dunbar, he was still married to Ms. Ryan. His marriage to Ms. Dunbar was therefore a nullity.

[21] Parcel 98 was purchased with funds that came from Dr. Webster and some funds from Ms. Dunbar. It is registered in Dr. Webster's name. The cheque that she has put in evidence is consistent with her evidence. Very little weight is placed on the note made on the 1099-1999 form and Dr. Webster's evidence that the land was purchased with his sole funds. The court accepts that Ms. Dunbar contributed US\$62,500.00 to the purchase price of Parcel 98, which was US\$120,000.00. It is clear that at the time of the purchase of the land, Ms. Dunbar was not a believer of Anguilla. Dr. Webster indicated in the transfer documents that he purchased Parcel 98 for US\$80,000, whereas the purchase price was US\$120,000.

[22] In 2002, the construction of the Anguilla home commenced and the property was completed sometime after; the home sits on Parcel 98 and from time to time both parties came to Anguilla and stayed there. In fact, they came home three or four times a year. During the construction of the home, both Dr. Webster and Ms. Dunbar contributed financially. Dr. Webster was, however, the greater contributor.

[23] For a short period of time, Dr. Webster worked for the medical company that Ms. Dunbar owned, MEDREC Inc. In addition to doing so, he worked at hospitals and for several other medical companies that he owned. He was a substantial wage earner, contrary to what Ms. Dunbar would have the court believe.

- [24] Ms. Dunbar left furnishings in the Anguilla home because she treated it as her vacation home. The evidential basis to assist the court in determining exactly what was left in the Anguilla home was not provided, save for the evidence in relation to the rugs, paintings and chandeliers.
- [25] A Mercedes Benz was bought in Dr. Webster's name and was shipped to Anguilla in 2004. She contributed the sum of US\$15,278.36 towards the purchase price. The court does not believe Dr. Webster that Ms. Dunbar merely paid that money, on his instructions, from his MEDREC Inc earnings. They both drove the vehicle while they were in Anguilla and it was insured, at NAGICO, in their joint names.
- [26] In 2003, Ms. Dunbar obtained belonger status in Anguilla and could then have had any interest which she may have held in Parcel 98 registered in her name. She asked Dr. Webster to add her name to the property but he refused. By this time, their relationship was on the downward slope. In 2005, it became acrimonious and in 2006 Dr. Webster left the home in which he lived with Ms. Dunbar, in the United States of America. Ms. Dunbar has not returned to the home in Anguilla since 2006, the year in which she filed a divorce petition against Dr. Webster. He opposed the divorce on the ground that they were not married. On 19th February 2009, the Circuit Court of Ninth Circuit, in Orange County Florida, in the divorce proceeding ordered that as at the date of the marriage between Ms. Dunbar and Dr. Webster, 29th June 1996, Dr. Webster was in a common law marriage with Ms. Anita Ryan and therefore the marriage between the parties was void. The court also held that because the marriage was void and Ms. Dunbar was not an innocent spouse her request for spousal support could not have been supported. It is clear to the court that sometime during their relationship MEDREC Inc was dissolved, thereafter Dr. Webster formed a company which he managed and which employed himself together with other anesthesiologists. Ms. Dunbar was also employed by this company and did not earn a lot of money.
- [27] Ms. Dunbar has been unable to visit or access the home in Anguilla, neither has she been able to retrieve any of the items which she claims were left in Anguilla. Parcel 98 is still registered in Dr. Webster's sole name.

[28] The Court proposes to treat with the facts in more detail specifically as they relate to the issues that have been identified.

Law

[29] The relevant legal principles are those which guide the court in circumstances where property is purchased in one party's name but there is a claim to a beneficial interest by another party.

[30] *Gissing v Gissing* [1970] 2 All ER 780 represents the traditional approach that the court took to the assessment or the determination of parties' interest in property. In that case it was held that:

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

[31] 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”.

[32] 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 the 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”.

[33] There is no doubt that Ms. Dunbar provided support to Dr. Webster as a wife, but it is clear that in order to obtain a beneficial interest in property she must provide the court with evidence of having done more than the usual tasks expected of a spouse or a partner. The person claiming to have a beneficial interest must also show that he/she acted to his/her detriment on the basis of the common intention. Nourse LJ in *Grant v Edwards* [1980] AC 638 stated the requirement as follows:

“This requires there to have been conduct on which the Claimant could not reasonably have been expected to act unless he/she was to have an interest in the property”.

[34] In *Grant v Edwards* *ibid*, Sir Nicholas Browne Wilkinson VC declared:

“If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the Claimant) in order to establish a constructive trust has to do so by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated:

- (a) That there was a common intention that both should have a beneficial interest; and*
- (b) That the Claimant has acted to his or her detriment on the basis of that common intention”.*

[35] It is clear that in order to acquire a beneficial interest in Parcel 98, the Merced Benz and the personal items there must be evidence on which the court can either infer or impute a common intention coupled with credible evidence of detrimental reliance by Ms. Dunbar.

[36] The law continued to develop and in *Lloyds Bank PLC v Rosset and Another* [1990] 1 ALL ER Lord Bridge of Harwich stated as follows:

“The first and fundamental question which must be resolved is whether independently of any inference to be drawn from the conduct of the parties in the course of sharing their house and managing their joint affairs, there was at any time prior to acquisition an 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 be 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 in asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he has acted to his or her detriment or significantly altered his position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel”.

[37] *Lloyds Bank PLC v Rosset* *ibid* it was stated that in resolving a dispute between two persons who had shared a home in circumstances where one party was entitled to the legal estate and the other party claimed to be entitled to the beneficial interest that:

“The fundamental question which had to be resolved was whether, on the basis of the evidence of express discussion between the parties and independently of any inference to be drawn from their conduct in the course of sharing the property and managing their joint affairs, there had been at any time prior to the acquisition of the property, or exceptionally at some later date, any agreement, arrangement or understanding reached between them that the property was to be shared beneficially coupled with detrimental action or alteration of position on the part of the person claiming the beneficial interest or, failing that, whether

there had been direct contributions to the purchase price by the person claiming an interest”.

- [38] The above principles culminated in the very helpful and forward thinking modern approach taken in ***Abbott v Abbott*** (2007) 70WIR 183. In ***Abbott v Abbott***, Baroness Hale enunciated 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 later date, been any agreement, an arrangement or understanding reached between the parties that the property is to be shared beneficially.”

- [39] The law has therefore moved on since in ***Abbott v Abbott***, Baroness Hale has helpfully stated the principle on determining common intention thus:

“The parties’ whole course of conduct in relation to the property must be taken into account in determining their shared intention as to its ownership.”

- [40] It is accepted based on ***Abbott v Abbott*** that the constructive trust is the more appropriate tool of analysis in matrimonial cases.

- [41] Further, in ***Abbott v Abbott***, Baroness Hale adopted the approach of the House of Lords in ***Stack v Dowden***, thereupon adopting with approval a passage from the Law Commission’s discussion paper on sharing homes. The passage stated:

“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 account of all conduct which throws light on the question what shares were intended”.

[42] In *Abbott v Abbott*, Baroness Hale also emphasised that:

“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 impulse with respect to the property in light of their whole course of conduct in relation to it”.

[43] Chief Justice Hugh Rawlins in *Michael v Michael*, Civil Appeal No. 015/2008 stated that Lord Diplock’s statement in *Gissing v Gissing* *ibid* that the court is not entitled to infer a common intention from the mere fact that she provided chattels for joint use in the new matrimonial home is not inconsistent with utilizing the holistic approach enunciated in *Abbott v Abbot*. Also, Chief Justice Rawlins stated that there must be evidence of detrimental reliance. Chief Justice Rawlins very helpfully held in *Michael v Michael* at paragraph 40, that the detrimental reliance should be founded with reference to things done in relation to the specific property.

[44] Chief Justice Rawlins in *Michael v Michael* reiterated that the above approach stated in *Abbott v Abbott* was the correct one to be taken in cases of this nature. The court can do no more than apply those very helpful principles that were enunciated. It is therefore clear that “there are two questions that should be addressed: first, was it intended that the parties share the beneficial interest in a property conveyed to one of them only; and secondly, if it was so intended, in what proportions was it intended that they share the beneficial interest”. See *Abbott v Abbott*.

[45] Accordingly, in determining the parties’ respective shares in the beneficial interest in the property, the court will have regard to the whole course of dealing between the parties in relation to the property, taking into account all matters which throw light on the question what shares the parties intended.

[46] *White v White* [2001] 1 AC 96 is authority for the proposition that the general rule is to find both parties as having an equal beneficial interest in the property. See also *Grant v Edwards*. This rule may, however, be departed from depending upon the particular circumstances of the case. This rule was applied in *Norman Jarvis v Carmeila Williams*, ANUHCV2008/0238.

- [47] In *White v White* [2001] 1 AC 96, Lord Nicholas stated that:
- “where each spouse has contributed equally in their different sphere to the acquisition of the property as a general guide equality in the distribution of the matrimonial assets should only be departed from only if and to the extent that, there is good reason for it”.*
- [48] The very helpful principles that were also stated by Chief Justice Hugh Rawlins in *Michael v Michael* are applicable in seeking to ascertain the beneficial interests of the parties; the court must examine the totality of circumstances so as to be able to come to a fair and reasonable proportioning of the beneficial interest.
- [49] In *Cooke v Head* [1972] 2 ALL ER 38, it was held that the constructive trust imposed by the court on the legal owner in the case of a husband and wife, who by their joint efforts acquired property to be used for their joint benefits applied to a man and his mistress who acquired property by their joint efforts with the intention of setting up home together. Accordingly, it was held that the defendant, in that case, held the property in trust for himself and the Claimant beneficially.
- [50] In *Midland Bank v Dobson* [1986] 1 FLR 171, it was held insufficient to create an equitable interest that there was simply a common intention unless there was some detriment suffered by the claimant. See also *Grant v Edwards*; *Abbott v Abbott*.
- [51] See Halsbury's Laws of England, Vol. 48 Fourth Edition at paragraph 617, in which it is stated that the same principles that govern married couples govern the property rights of unmarried couples.
- [52] In *Paragon Finance PLC v D B Thakerar & Co* [1999] 1 ALL ER 400, Millet LJ stated that:
- “A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property usually but not necessarily the legal estate to assert his own beneficial interest in the property and deny the beneficial interest of another”.*
- [53] The court proposes now to address the issues in relation to Parcel 98.

Parcel 98

- [54] In the court's view, the determination of this issue is to a large extent based on the court's assessment of the credibility of the parties; this would in large measure determine the weight to be attached to their respective evidence. In addition, the court has carefully perused the documentary evidence.
- [55] The court is of the considered view that both parties were not as generous with the truth as they should have been. Ms. Dunbar and Dr. Webster told the court several things that were incorrect. However, since it is Ms. Dunbar who is seeking to establish a beneficial interest in the property, the onus of proof is on her. In this regard, there is some evidence which the court accepts that supports her contention as to the manner in which Parcel 98 was acquired.
- [56] The documentary evidence that was placed before the court was given great weight. However, her evidence, both by way of witness statement and during the cross-examination that sought to test it, was exaggerated. Some of the answers she gave to skilful cross-examination by Ms. Dyer were inconsistent, vague and unreliable. These answers have been highlighted by learned Counsel Ms. Dyer, both during cross-examination and in her submissions. For her part, learned Counsel Mrs. Richardson-Hodge utilized much dexterity in advocating while seeking to salvage Ms. Dunbar's evidence in relation to the inflated figures that she gave as her contributions to the construction of the home on Parcel 98.
- [57] However, nothing would be gained from chronicling the several misrepresentations that were made by Ms. Dunbar in the course of her testimony. In a word and to put it very mildly, the court found that Ms. Dunbar in her oral evidence grossly exaggerated her contributions to the acquisition of the Anguilla home. Also, her evidence in the witness statement was not credible in relation to her contributions towards the construction of the house in Anguilla. It bears nothing that at the time of Dr. Webster's purchase of the house in 1999, both Ms. Dunbar and Dr. Webster were aware that the court of California had adjudged that he was married to Ms. Ryan. Therefore, his marriage to Ms. Dunbar was a nullity.

- [58] The court accepts that the cost of Parcel 98 was US\$120,000.00. Ms. Dunbar told the court that she contributed US\$62,500.00 towards the purchase price for the land; she says that she gave Dr. Webster about US\$62,500.00 towards the purchase of the land since he was short of his amount. She has produced a copy of a cheque in her name. On this aspect of the matter, the court accepts her evidence that she contributed the US\$62,500.00 since the clear memorandum on the cheque indicates that it related to the Anguilla land. It is also accepted that Dr. Webster had incorrectly stated in the transfer documents that the purchase price was US\$80,000.00 in order to avoid the payment of the correct taxes. This goes to his credibility.
- [59] Next, she says that while they agreed to purchase the land together, Paul told her that her name could not go on the property because she was not a citizen of Anguilla. She eventually became a believer of Anguilla in 2003 and whenever she asked him about having her name placed on the property he got upset. The court accepts this aspect of her evidence as correct. The court does not believe Dr. Webster when he said that he never had any discussion with Ms. Dunbar in relation to the purchase of the land, neither was he aware that she applied to become a believer of Anguilla. However, there is no doubt that Dr. Webster contributed the greater part of his finances to both the acquisition of Parcel 98 and the construction of the house.
- [60] A perusal of the 1099-1999 document that Ms. Dunbar says was a draft also tells part of the story by showing the substantial sums of money that Dr. Webster earned as an anesthesiologist. The court is not for one moment convinced that a substantial amount of the monies that were used to construct the house in Anguilla, emanated from Ms. Dunbar. While it may be true that she may have on rare occasions spent small sums of money towards this end, the court has no doubt that she was reimbursed for some of her expenditure and not all as stated by Dr. Webster. The court accepts that the refund on their joint income tax was spent on the Anguilla home.
- [61] In view of the totality of the cogent and credible evidence that emanated from Ms. Dunbar, it is clear that she made some financial contributions towards the construction of the home which did not amount to the highly exaggerated sum of US\$325,000.00, as she would have the court believe. The court is reinforced in its view by the cogent and credible evidence which indicates that

Dr. Webster opened his bank accounts in his sole name. This is particularly so in relation to the bank accounts held with Scotiabank, Anguilla, into which most of the monies were deposited and from which withdrawals were made towards the construction of the home in Anguilla. In addition, he was able to amass a number of properties in the United States of America, even though Ms. Dunbar would have the court believe that he only earned US\$60,000 per year; while she says that she earned US\$200,000.00 per year. The court has no doubt that Dr. Webster earned significantly more than her. The court does not believe that Dr. Webster told Ms. Dunbar that her name could not go on the account since she was not an Anguillian citizen. In any event, this is far from correct and Ms. Dunbar being experienced in the ways of the world would not have accepted this as the truth without question.

[62] Perhaps it is important to make clear that even though there is great conflict between the evidence of Ms. Dunbar and that of Dr. Webster in relation to the sources of the monies that were used to construct the home, on a review of the evidence the court has no doubt that Ms. Dunbar was not candid with the court when she said that she gave Dr. Webster approximately US\$325,000.00 towards the construction of the home. While the court accepts that Ms. Dunbar provided MEDREC Inc cheques to Dr. Webster for substantial sums, there is no doubt that these sums represent payment for the anesthesiological services that he had provided to various hospitals and for which MEDREC Inc was the authorized collecting agency. The court is fortified in its view having examined the relevant documentary evidence which clearly shows that Dr. Webster earned substantial sums of monies as an anesthesiologist. It bears nothing that based on Ms. Dunbar's evidence and that of Dr. Webster that he was the Chief Anesthesiologist at a hospital. He subsequently formed a company and had several doctors working for him.

[63] Having given careful examination to the evidence that surrounds Dr. Webster's employment, the court is satisfied that he was a very significant wage earner and this was from very different sources; for the sake of completeness the court is far from satisfied that Dr. Webster was an employee of Ms. Dunbar in the traditional sense of the term. The better and accepted view, on the evidence, is that MEDREC Inc was incorporated as a billing agency and was utilized by Dr. Webster to protect himself from any possibility of legal liability.

- [64] There is no doubt in the court's mind that at the date of the purchase of the property Ms. Dunbar was an alien and could not own property in Anguilla. The court believes her when she said that Dr. Webster told her that her name could not be recorded on the legal document since she was not a believer of Anguilla. On a few occasions she assisted him to supervise the construction of the house when he was unable to visit Anguilla. Dr. Webster took the lead in the financial and decision making matters in relation to the property, but Ms. Dunbar also played a role – albeit a lesser one.
- [65] There is equally no doubt that Dr. Webster worked for several companies and made quite a bit of monies from doing so. He is obviously a very astute businessman. In his personal life while he did several things with Ms. Dunbar as husband and wife, in relation to several others, he seemed to have kept his personal life and business arrangements quite separate. There is evidence which he accepted that he owns several properties in the United States of America which are registered in his sole name.
- [66] The court does not believe Dr. Webster when he says that he never intended nor was there any discussion, agreement, arrangement or understanding prior to or at the time of the acquisition of land. It is evident that Ms. Dunbar was privy to all of the discussions and decisions that predated and influenced the purchase of Parcel 98. In a word she was an integral part of the decision making and was able to provide the court with minute details surrounding the acquisition of Parcel 98. This could only have been possible, at the very least, if she was either a party to the discussions or Dr. Webster told her of the decisions.
- [67] The court does not accept nor believe that Dr. Webster and Ms. Dunbar did not live together as man and wife, as he would have the court believe. The overwhelming credible evidence indicates that they lived as such and did many things as a family. It is accepted that Ms. Dunbar, who was a nurse after the birth of their daughter stayed at home and took care of her family, including Dr. Webster.

Application of Law to Facts

Parcel 98

- [68] In the case at bar, there is no direct evidence of common intention. Accordingly, the court must review their parties' entire course of dealings in relation to the property in order to glean their imputed or inferred common intention. The court is enjoined to assess their conduct and total course of dealings in order to determine whether there is evidence from which the common intention can be inferred or imputed. See *Abbott v Abbott* *ibid*.
- [69] The factors which the court will take into consideration in its determination of whether or not there was a common intention include:
- (a) Any discussion at the time of transfer which cast light upon their intention then;
 - (b) The reason why the home was not acquired in their joint names;
 - (c) The purpose for which the house was acquired;
 - (d) The nature of the parties relationship;
 - (e) How was the home financed both initially and subsequently; and
 - (f) How the parties arranged their finances.
- [70] In seeking to make this determination, the court bears in mind and is guided by the principles enunciated in *Gissing v Gissing* and *Burns v Burns* and apply them. Of great importance and application is the pronouncement of Baroness Hale in *Abbott v Abbott* that:

“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 light of their whole course of conduct in relation to it. The court proposes to apply the holistic approach as stated in the Law Commission’s discussion paper on Sharing Homes (2002, Law Commissions No. 278, para 4-27).

“There is no doubt that the parties shared the common intention for Ms. Dunbar to acquire a beneficial interest in Parcel 98 and the Anguilla home”.

[71] The parties dealt with Parcel 98 and the Anguilla home as if they belonged to both of them. They did several things including utilizing it several times per year as a family. They both made decisions in relation to it even though Dr. Webster took the lead. Also, the court places great weight on the other evidence including the details that Ms. Dunbar told the court as to how they came to know that Parcel 98 was for sale. Equally important is the totality of circumstances of acquiring Parcel 98 and the reasons that were given for the failure to place Ms. Dunbar’s name on Parcel 98: she was not a belonger, coupled with the fact that she was involved in the decision making in relation to the construction of the house. Looking at the matter in the round, it is clear that Ms. Dunbar knew all of the details surrounding the acquisition of Parcel 98 and was privy to all of the financial arrangements even though Dr. Webster would have the court believe that he had no discussion with her in relation to the purchase of Parcel 98 and supervision of the construction of the home. The course of dealings between the parties clearly indicate their imputed common intention for Parcel 98 and the Anguilla home to be held beneficially between them. See **Paragon Finance PLC v D B Thakerar & Co** *ibid*.

Detrimental Reliance

[72] Mere common intention is not enough. Ms. Dunbar is also required to prove that she acted to her detriment or significantly altered her position in the reasonable belief that by so acting she was acquiring a beneficial interest in Parcel 98. See **Grant v Edwards** *ibid*. I can do no more than apply the very helpful principles enunciated by Nourse LJ in **Grant v Edwards** when he stated:

“This requires there to have been conduct or which the Claimant could not reasonably have been expected to act unless she was to have an interest in the property”.

[73] In the case at bar, there is the conduct of Ms. Dunbar of contributing to the purchase price of Parcel 98; assisting in purchasing material used for construction; being involved in the supervision

of the construction of the house which support her detrimental reliance. See also *Midland Bank v Dobson* *ibid.*

- [74] Accordingly, there is clear indication of detrimental action by Ms. Dunbar based on the shared or common intention that Parcel 98 and the house should be shared beneficially. In a word, there is convincing and cogent evidence of this in the form of her contribution of US\$62,500.00 towards the purchase price of Parcel 98 and her purchase of some of the materials that were used in constructing the house with her sole funds. As stated earlier, the court does not believe that she was reimbursed all of the monies she spent on the construction of the home as Dr. Webster sought to persuade the court, even though the parties did not have a joint bank account and while it is clear that Dr. Webster was the major financial contributor to the acquisition and construction of the property. This in no way detracts from the fact that Ms. Dunbar is entitled to a beneficial interest in Parcel 98 and the Anguilla home based on constructive trust principles. See *Cooke v Head* and *Abbott v Abbott*.

Beneficial Share in Parcel 98

- [75] The court must now go on to examine the conduct of the parties and their course of dealings in order to determine whether there was a common intention in relation to the share of the contributing spouse and the amount of the share. See the very useful guidance of Lord Diplock in *Gissing v Gissing*. It must be borne in mind that since Dr. Webster was the greater financial contributor to the acquisition of Parcel 98 and construction of the home, the court is not of the view that the parties intended that the property should be held beneficially in equal shares. The principles enunciated in *White v White* are applicable in the case at bar; however, there is good reason to depart from the “*equality is equity*” principle, due primarily to the contribution that Ms. Dunbar made to the acquisition of Parcel 98 and construction of the Anguilla home.

- [76] In *Gissing v Gissing* Lord Reid stated:

“If her payments are direct she gets a share proportionate to her contribution. Otherwise there must be a rough and ready evaluation. I agree that this does not mean that as a rule

she gets a half share. I think that the high sounding "equality is equity" is 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 may be a tenth or a quarter or sometimes even more than half".

[77] Guided by those very helpful pronouncements, the court has to do justice between the parties. At all times the court must ensure that the quantification is fair and reasonable. Taking into account the totality of circumstances, the court is of the considered view that Ms. Dunbar is entitled to 25 percent beneficial interest in the Parcel 98 and the property thereon. It is so ordered, accordingly.

Mercedes Benz

[78] Ms. Dunbar said that she contributed financially to Dr. Webster's purchase of the Mercedes Benz car. Her evidence on this aspect of the claim was persuasive. The court accepts her evidence in preference to that of Dr. Webster. The documentary evidence which corroborates Ms. Dunbar's story paints the true picture in relation to the acquisition of the car. Even though under strenuous cross-examination, Ms. Dunbar's evidence was found wanting. An example of this is her production of an invoice in support of her claim which had nothing to do with it; Dr. Webster was not forthright either. However, where there is conflict between her evidence and that of Dr. Webster's on the circumstances and mode of acquisition of the Mercedes Benz, the court accepts Ms. Dunbar's evidence on the primary basis that the documentary evidence is consistent with her claim. The notation on the 1099-1999 form is insufficient to displace the otherwise credible evidence which was provided in the nature of the personal cheque for US\$15,278.36, which was read together with her oral evidence.

[79] The Mercedes Benz was purchased in 1999. The court accepts that the price of the Mercedes Benz was US\$35,278.00 as stated by Dr. Webster. It is not accepted nor believed that Dr. Webster paid for the vehicle with his sole funds from his employment at MEDREC Inc. There is no doubt that the Certificate of Title was registered in his sole name. There is no dispute and the court believes that Dr. Webster paid the initial deposit of US\$20,000.00. The point of departure between the parties is in relation to payment of the balance of US\$15,278.36. On this aspect of the claim,

the court accepts the evidence of Ms. Dunbar in preference to that of Dr. Webster's: that she traded in her vehicle and contributed the sum of US\$15,278.36 towards the purchase of the Mercedes Benz. The court does not believe Dr. Webster when he said that the personal cheque for US\$15,278.36 from Ms. Dunbar represents payment from MEDREC Inc to him for medical services that he had rendered. There is no doubt that, contrary to what Dr. Webster would have the court believe, the Mercedes Benz was treated by both of them as belonging to them. It is for this reason that Dr. Webster having shipped it to Anguilla, called his friend Mr. Quincy Gumbs, who at the time was the agent for NAGICO, and had it insured in both of their names. Dr. Webster was forced to admit this during the skilful cross examination by learned Counsel Mrs. Richardson-Hodge, that it was insured in both names even though he tried to convince the court that he was unaware of this.

[80] In the interest of completeness, the court does not believe Dr. Webster's evidence when he sought to convey that when he and Ms. Dunbar were in Anguilla he drove the Mercedes Benz and she did not.

[81] The parties treated the Mercedes Benz as belonging to both of them even though most of the purchase price for the vehicle was paid from his monies and earnings. The law, however, does not recognize any concept of family property. The court must therefore proceed to ascertain the parties' common intention.

Application of the Law of the Facts

Common Intention

[82] Based on the totality of circumstances alluded to earlier, the court has no doubt that there was the imputed common intention between the parties that the Mercedes Benz was to be owned beneficially by both parties. This is based on a careful examination of the course of dealings, including that referred to above, between the parties in relation to the Mercedes Benz. The court is satisfied that both Dr. Webster and Ms. Dunbar had the common intention that she should be beneficially entitled to an interest in the vehicle. This position is reinforced by the fact that

Dr. Webster having shipped the vehicle to Anguilla caused it to be insured in their joint names. They used the car with that common intention. The matter, however, does not end there. The court must go on to consider whether as a consequence of the common shared intention Ms. Dunbar acted to her detriment in relation to the vehicle.

Detrimental Reliance

[83] The principles enunciated in *Abbott v Abbott*, *Grant v Edwards*, per Nourse LJ and *Gissing v Gissing* are here again very applicable.

[84] In the case at bar, there is evidential basis on which the court can properly conclude that as a consequence of the common intention, Ms. Dunbar did acts which she could not reasonably be expected to do unless she was to have had a beneficial interest in the Mercedes Benz. To put it beyond doubt, there is the evidence of the payment of US\$15,278.36 from which it is clear that Ms. Dunbar acted to her detriment. See *Midland Bank v Dobson*. This is inconsistent with the principle in *Abbot v Abbott*.

[85] In the presence of evidence that Ms. Dunbar conducted herself in a manner which was detrimental to herself and referable to the acquisition of the Mercedes Benz, she is clearly entitled to be awarded a beneficial interest in the vehicle.

Beneficial Interest in the Mercedes Benz

[86] This brings the court to determine the nature of the beneficial interest to which Ms. Dunbar is entitled. Here again, the court applies the very helpful principles enunciated in *Gissing v Gissing*, *Grant v Edwards* and *Abbott v Abbott*. There is no basis for awarding her 50 percent interest in the Mercedes Benz. See *White v White*.

[87] Taking into account the totality of circumstances, the court is of the considered view that the justice of the case warrants that the court awards Ms. Dunbar 40 percent equitable or beneficial interest in the Mercedes Benz. There is no evidence presented to the court in relation to the whereabouts of

the Mercedes Benz. Dr. Webster has quite candidly indicated that he has given the car to his sister. The court has to seek to give a quantification to that 40 percent interest taking into account the possible depreciation in the value. Using an after depreciation value of US\$20,000.00 for the car, the 40 percent interest should be calculated on this value; there is no indication as to where the vehicle is or the condition in which it is. The best the court can do in order to do justice between the parties is to order that Ms. Dunbar be compensated in the sum of which represents her 40 percent beneficial interest in the Mercedes Benz which the court has estimated to value US\$20,000.00.

Application of law to facts

Miscellaneous Items

[88] In her statement of claim, Ms. Dunbar claimed 100 percent equitable interest in miscellaneous items which she says she left in the Anguilla home. She listed them in her statement of claim and gave a total value of US\$81,250.00. She has failed to specify them in her witness statement even though in paragraph 16 of her witness statement she says that she went shopping for supplies for their home. She shopped for carpet and tiles. She also shopped at Walton Fleming's store with whom they had an account. In paragraph 20, she said that since April 2006 she had no access to their home in Anguilla and does not know what happened to her car, her personal belongings or her daughter's personal belongings. The court has given deliberate consideration to both the documentary and oral evidence adduced by Ms. Dunbar and is far from satisfied that she has provided the evidential basis to conclude that she purchased the several items listed in the statement of claim. In a word, Ms. Dunbar has not provided the court with any credible or reliable evidence to prove that she left the various items listed in the statement of claim in the home in Anguilla apart from the rugs, chandelier and a painting. Accordingly, the court has no basis on which to conclude that she is entitled to any equitable or beneficial interest in the other items listed in the statement of claim.

[89] While the court accepts that the parties shipped goods and furniture from the United States of America to the home in Anguilla, the relevant evidential basis to prove that Ms. Dunbar left the various items listed in the statement of claim in the home in Anguilla was not provided. Indeed, the quality of evidence provided by Ms. Dunbar, on this aspect of the claim, leaves much to be desired. Apart from her bold assertions in her witness statement that she left various valuable items in the home, there was no credible or reliable evidence on which the court could be persuaded that she left all of those items including jewelry in the Anguilla home. What is even more disconcerting is that much of the documentary evidence that she has provided the court, in support of her claim, does not bear out her version of the claim. On this aspect of the claim, the court generally prefers Dr. Webster's evidence namely, that he furnished the house with his own monies. However, here again, the court is not of the view that he was candid when he said that she only purchased one red carpet for the sum of US\$300.00 for the house.

[90] While the court is inclined to the view that Ms. Dunbar may have purchased a few items in assisting to furnishing the Anguilla home, the evidential basis was not provided on which the court could be satisfied that she purchased the items listed in the witness statement. For example, the court does not believe at all that Ms. Dunbar left jewelry since April 2006 worth US\$3000.00 in the home in Anguilla. Definitely regarded as an exaggeration and not believed is her statement of claim that she provided the furniture in the home to the value of US\$50,000.00. The court has no reservation in accepting Dr. Webster's evidence as closer to the truth even though he too exaggerated his evidence.

[91] This aspect of the claim is very challenging insofar as neither Ms. Dunbar nor Dr. Webster sought to provide the court with reliable or credible evidence. Nevertheless it must however be borne in mind, that the burden of proof remains on Ms. Dunbar throughout the claim. Interestingly, she seeks to be compensated to the extent of 100 percent of the value of the miscellaneous items. The basis for this assertion is far from clear. The court has no basis on which to conclude that Ms. Dunbar had other items in the Anguilla house, moreso to have been left there. She has failed to provide the court with any credible or reliable evidence in relation thereto. The court accepts that Ms. Dunbar purchased rugs, a painting and chandeliers for the Anguilla home. They were used by the entire family and were treated as belonging to Ms. Dunbar and Dr. Webster. The court accepts

that the purchase price of the persian rugs was US\$16,500.00. There is no reliable evidence provided as to cost of the painting or the chandeliers.

Common Intention

- [92] Applying the principles referred to above in *Abbott v Abbott*, *Gissing v Gissing*, the court is satisfied that there was the common intention that Ms. Dunbar would obtain a beneficial interest in the painting, chandeliers and the rugs. In reliance on that common intention, she acted to her detriment and spent the sum of US\$16,500.00 to purchase the rugs.
- [93] Taking into account the difficulty presented by the quality of credible evidence which Ms. Dunbar has provided, the court is of the view that the starting point of her share is 50 percent, but this has to be adjusted. See *White v White*. In relation to this aspect of the claim the court has to try to do its best in ascertaining what is just in the circumstances.
- [94] Taking into consideration the totality of circumstances, there is no doubt that the case at bar is an appropriate one in which to depart from the "equality is equity" principle. Accordingly, the court awards her 60 percent in the persian rugs. See *Gissing v Gissing*.
- [95] The court accepts Ms. Webster's evidence that she left a chandelier and painting in the house. The court is of the view that in the absent of any evidence as to cost of the painting and chandeliers, it is difficult to determine the present value of them. Neither has any evidence been provided as to the quantity of the chandeliers. The court is of the view that it should not abstain from determining the beneficial interest, even though Ms. Dunbar has failed to provide the proper evidential basis.
- [96] In all of the circumstances, the court is of the view that a nominal award of US\$2,000.00 is adequate to represent Ms. Dunbar's beneficial interest in the chandeliers and the painting.

Caution

[97] As stated earlier, Dr. Webster has counterclaimed for damages against Ms. Dunbar on the basis that she has wrongfully caused the Caution to be placed against Parcel 98. In view of the above, it is unnecessary to address this issue.

Conclusion

[98] In view of the premises, there will be judgment for Ms. Lois Dunbar against Dr. Paul S. Webster on her Statement of Claim. The counterclaim filed by Dr. Paul S. Webster against Ms. Lois Dunbar is dismissed. It is hereby ordered as follows:

- (a) Ms. Lois Dunbar is entitled to 25 percent beneficial interest in Registration Section West Central Block 28309 B Parcel 98, at its current value.
- (b) Dr. Paul S. Webster holds a 25 percent beneficial interest in Parcel 98 on trust for Ms. Lois Dunbar.
- (c) The Registrar of Land is directed to amend the register so as to reflect Ms. Lois Dunbar's 25 percent beneficial interest in Parcel 98.
- (d) The Registrar of Land is to maintain the Caution that has been placed on the register until further order of Court.
- (e) Ms. Lois Dunbar is entitled to be compensated in the sum which represents her 40 percent beneficial interest in the Mercedes Benz estimated at a value of US\$20,000.00.
- (f) Ms. Lois Dunbar is entitled to be compensated in a sum which represents her 60 percent beneficial interest in the persian rugs valued at US\$16,500.00.

(g) Ms. Lois Dunbar is entitled to a beneficial interest in the chandeliers and the painting to the estimated value of US\$2,000.00.

(h) Ms. Lois Dunbar is to have prescribed costs unless otherwise agreed.

[99] The Court gratefully acknowledges the assistance of learned Counsel.

Louise Esther Blenman
Resident High Court Judge
Anguilla