

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

CLAIM NO: ANUHCV 2010/0668

BETWEEN:

PAULA AMANDA CAMERON

Claimant

and

CHRISTOPHER H. CAMERON

Defendant

Appearances:

Mr. Dane Hamilton, Q.C. and Mr. D. Raimon Hamilton for the Claimant
Mr. George Lake for the Defendant

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2012: April 17
August 20
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JUDGMENT

[1] **MICHEL, J:** The Claimant and the Defendant are husband and wife, having been married on 30th April 1994, and although divorce proceedings had been instituted by the time the present case was filed in October 2010, they were not divorced at the time when this case was heard in April 2012.

[2] In Claim No. ANUHMT 2010/0014, this Court addressed the issue of custody and maintenance of the two children of the marriage of the Claimant and the Defendant. In the present case - commenced by fixed date claim form on 26th October 2010 - the Claimant seeks a declaration that the matrimonial home of the parties consisting of a portion of land at Bellevue Estate in the Parish of St. Peter's, together with the dwelling house on it, is held by the Defendant on trust for the Claimant and the Defendant as beneficial tenants in common in equal shares or in such shares as the Court shall determine. The Claimant also seeks other related orders.

[3] In support of her claim, the Claimant filed an affidavit on the same 26th October, in which she alleged that after their marriage on 30th April, 1994 she and the Defendant lived in rented accommodation at Crosbies. They were both employed and they established a joint account at Barclays Bank in both of their names, to which they both contributed from their earnings and the proceeds of which account they used to defray various household expenses. Later that year (1994) they decided to purchase a portion of land at Bellevue Estate for \$37,000, upon which land they intended to construct their matrimonial home. They each contributed \$5,000 to the purchase price of the land and paid the balance of the purchase price from the proceeds of a joint loan which they took at Barclays Bank, which loan was repaid from their joint account at the aforesaid bank. The land was purchased in the name of the Defendant only, because he (unlike the Claimant) had by then attained citizenship of Antigua and Barbuda. In 1998 they decided to build their home on the land, for which purpose they obtained a joint loan of \$485,000 at SAGICOR (formerly The Barbados Mutual Life Assurance Society). The mortgage loan was secured by a legal charge on the land executed by both the Claimant and the Defendant and by life insurance policies taken by them on their lives. The SAGICOR loan covered 75% of the building costs of the matrimonial home, with the other 25% of the building costs being financed from the funds of the Claimant and

the Defendant. The funds used for this purpose came from a savings account opened by the Claimant (in the names of the Defendant and her) at Caribbean Banking Corporation (now RBTT Bank) in which account the Claimant had deposited the sum of \$57,643.89 which she had obtained as a legacy from a deceased aunt of hers in St. Vincent. She had also deposited into that account savings from her earnings and from some of the money given to her by the Defendant to run the household. The matrimonial home was built by her employer at the time, Mr Rob Barrett, who made several gratuitous contributions to the design of the house, the acquisition of building materials for the house and the finishing and furnishing of the house. Prior to the construction of the matrimonial home, the Defendant had given the Claimant \$5,000 monthly towards defraying of the household and other expenses of the parties and their children but, after the house had been constructed, the Defendant started to give her \$7,500, from which the aforesaid household and other expenses were defrayed, including now the monthly mortgage payment of \$4,680.35, insurance for the house and property taxes.

[4] On 6th January 2011, the Defendant filed a defence to the Claimant's fixed date claim and affidavit in support, which defence supplanted an affidavit in response previously filed on his behalf. In his defence, the Defendant admitted that he and the Claimant had discussions about purchasing a parcel of land together and it was agreed that they would both contribute equally to the joint account to pay for the land. The land was purchased and the monies were taken from their joint account. The Claimant had the care and control of this account and the Defendant would give her his agreed contribution and assumed that she would make her contribution and the expenses and land loan would be paid.

[5] The Defendant admitted that in 1998 he and the Claimant had discussions about building a house on the land. They agreed that they would each contribute equally towards the mortgage and that they would use the same joint account to pay their expenses and the mortgage. During this period, the Defendant was not aware that the Claimant was not living up to her agreement as to her contributions to the household expenses, but as her salary was smaller than his he made up the difference by putting more funds into the joint account. By 1998 the Defendant was putting \$5,000 per 28-day period towards the joint account, but he did not know exactly how much the Claimant was putting in from month to month, although it had been agreed that the expenses would be shared.

[6] The Defendant admitted that he and the Claimant negotiated and signed the necessary charge and insurance documents for obtaining the financing of the house and in 1998 commenced construction of the house. He denied that the Claimant put any of her money from her savings or any legacy towards the down payment of the house and asserted that all the monies came from his savings account and the joint account of which he was the major contributor. The Defendant also denied that they received assistance from Mr Barrett as alleged by the Claimant and he asserted that Mr Barrett only made some suggestions towards the redesign of the house, and that furniture for the house purchased overseas was shipped to Antigua in Mr Barrett's containers.

[7] The Defendant asserted that the Claimant's contributions were less than a fifth of those which he was making based on their agreement to share the expenses and mortgage payment and it was only upon going through the records of the joint account on the home computer that he realized that the Claimant had in fact been making very little contribution to either the mortgage or the household expenses and had not been living up to her end of the agreement between the parties

as to contribution. He believes that the Claimant would be unjustly enriched if she was given any or an equal share in the matrimonial home. He asserted that he is the registered proprietor of the property and has made most, if not all, of the mortgage payments based on his contribution and the Claimant's contribution to the joint account. He also asserted that the Claimant has chosen to use the monies she earned as she saw fit without making her proper contribution and now at this late stage she wishes to rely on an agreement that she never lived up to.

[8] The Defendant has asked that the Claimant's claim be dismissed and that he be granted a declaration that he is the sole owner of the matrimonial home and holds legal title absolutely or, in the alternative, that the Claimant is entitled to a 15% share in the property and, as the majority owner, he be given the option to purchase the Claimant's interest in the property.

[9] On 10th February 2011, the Claimant filed a reply in which she joined issue with the Defendant on his defence. In particular, she denied that there was ever any discussion or agreement between the Defendant and her as to their individual contributions to the household expenses and/or the joint account, save that it was clearly recognized that given the Defendant's greater earnings his contribution would exceed the Claimant's. The Claimant also specifically controverted that it was ever agreed between the Defendant and her that their respective shares in the matrimonial home would be limited to their individualized contributions.

[10] The evidence given by the parties in their witness statements and in their testimony in Court did not differ from the contents of their statements of case which, in the case of the Claimant, was a fixed date claim form and an affidavit in support and, in the case of the Defendant, was a defence. In

fact, in their witness statements they repeated and elaborated upon what was contained in their statements of case.

[11] The law to be applied to the facts and circumstances of this case is no different to that which would be applicable to the same facts and circumstances in England. It is derived from the Married Women's Property Act (the relevant provisions of which are materially identical in England and in Antigua and Barbuda) and from a plethora of cases decided by the High Courts and Courts of Appeal of England and the Eastern Caribbean and by the House of Lords and the Privy Council. The cases which are most often cited as being determinative of the applicable law start from the 1969 decision of the House of Lords in **Pettitt and Pettitt**¹ and continue with the 1970 decision of the House in **Gissing v Gissing**², the 1990 decision of the House in **Lloyds Bank plc v Rosset**³ and the 2007 decision of the House in **Stack v Dowden**⁴. In our own jurisdiction, the 2007 decision of the Privy Council in the Antigua and Barbuda case of **Abbott v Abbott**⁵ has often been cited as having adopted and applied the English authorities in Antigua and Barbuda.

[12] The law to be derived from these just-cited legislative and judicial authorities is in essence that, when it falls to the court to determine the beneficial ownership of property the legal title to which is vested in one only of the parties claiming a beneficial interest, the task of the court is to examine the facts and circumstances as they existed at the time that the property was acquired and to determine entitlement accordingly. The cases cited all deal with property conveyed in the name of

¹ [1969] 2 ALL ER 385

² [1970] 2 ALL ER 780

³ [1990] 1 ALL ER 1111

⁴ [2007] ALL ER 208

⁵ [2007] UKPC 53

one of two parties to a marriage and the court was tasked with determining whether the other party was beneficially entitled to a share in the property and, if so, what was the extent of that share. In the case of **Stack v Dowden**⁴ though the parties were in a common law union as opposed to a legal marriage and in the case of **Pettitt v Pettitt**¹ the issue was whether the husband acquired any beneficial interest in the property of his wife by contributing to its improvement as opposed to his making any contribution to its acquisition. The principles enunciated by the House of Lords in these two cases do not however differ from the propositions emanating from the other cases cited.

[13] The undisputed evidence in the present case is that in 1994, shortly after they were married, the parties discussed and agreed to purchase a portion of land on which they would later build a family home. Both parties contributed to the purchase price of the land, which was purchased in the name of the Defendant because he was a citizen of Antigua and Barbuda and the Claimant was not. In 1998 they discussed and agreed upon the building of a house on the land. They obtained a loan of \$485,000 from SAGICOR to part finance the construction of the house. The loan, which was secured by a legal charge over the land, was in the joint names of the Claimant and the Defendant and was further secured by life insurance policies taken by each of them in their respective names. The house was built by the Claimant's employer, who provided some forms of assistance to the parties in the design, construction and/or furnishing of the house. Upon the completion of the house in 1999, the Claimant and the Defendant moved into the house which was their matrimonial home until the breakup of the marriage in or around 2010. Both parties contributed to the construction cost of the house.

[14] From these undisputed facts it clearly emerges that:

1. the Claimant and the Defendant agreed to and did purchase together a portion of land at Bellevue Estate in St. Peter's, which was paid for (in part at least) from their joint funds, including a loan taken jointly by the two of them;
2. the land was purchased in the name of the Defendant only, because of the cost and delay involved in including the name of the Claimant on the deed whilst she was a non-citizen;
3. it was agreed, understood and intended by the Claimant and the Defendant that the land would be the joint property of both of them;
4. the Claimant and the Defendant agreed to build their matrimonial home on the land;
5. it was agreed, understood and intended by the Claimant and the Defendant that the matrimonial home would be the joint property of both of them;
6. the Claimant and the Defendant obtained a mortgage loan to part finance the construction of the matrimonial home, which loan they both bound and committed themselves to repay.

[15] It is the Claimant's case that she and the Defendant together paid for the land and the house, though their relative financial contributions were not necessarily equal because the Defendant's earnings were always significantly more than hers; that they never determined what the contribution of each should be to the outlays in respect of the purchase of the land and the construction of the house; and that she is entitled to a half share in the house and land.

[16] It is the Defendant's case that, although the land was purchased and the house was constructed jointly by the Claimant and him, it was agreed between them that the Claimant would contribute equally with him to the repayment of the mortgage and the household expenses; that the Claimant did not make an equal contribution to the mortgage payments and household expenses; that she had therefore not lived up to her side of the bargain; that he is the registered owner of the property and, notwithstanding their initial agreement, he is solely entitled to the house and land or, alternatively, that the Claimant is entitled to no more than a 15% share in the property, which he should be given the option to purchase from her.

[17] The learning from the authorities cited is that the court must determine the beneficial entitlement of the parties as at the time of the acquisition of the property and not at some subsequent time, unless the evidence reveals that a new agreement was made by the parties subsequent to the actual acquisition of the property in question.

[18] There is not, on the facts of this case, any evidence of an agreement entered into by the parties subsequent to the purchase of the land and the construction of the house which altered the agreement which existed at the time of purchase and construction; there is only an expression of dissatisfaction by the Defendant with the level of contribution by the Claimant to the admittedly joint enterprise. Indeed, under cross-examination the Defendant agreed that "in relation to this matter, which is a dispute as to matrimonial property, my position is that both parties had an agreement to acquire the matrimonial property" and that "the reality is what I am saying is that the property belongs to both of us, but I am advancing that my wife was supposed to make an equal contribution to the expenses of the household."

[19] The Claimant's case is not however founded on the law of contract requiring the court to determine what the terms of the agreement were between the parties and whether each had carried out his or her obligations under the contract, so as to determine whether the contract had been breached or was executed in accordance with its terms. This case is founded on the law of trusts, which requires the court to determine whether the holder of a legal estate in a property holds that legal estate in trust for himself and another. In this case, the trust would be a constructive trust constructed on the Defendant having been vested with the legal title to property towards the acquisition of which the Claimant contributed in reliance on an agreement between the Defendant and her that in so doing she was acquiring a beneficial interest in the property. A court, in the exercise of its equitable jurisdiction, would not allow the Defendant, who would have caused the Claimant to rely on that agreement, or acquiesced in her so doing, to her detriment, to now seek to assert his legal title to the land as entitling him to the sole ownership of the property.

[20] In the present case, there is not the usual difficulty attending a number of cases of this type where there is no clear evidence of a common intention of the parties at the time of the acquisition of the property as to whether it was intended to be their joint property. In this case, the common intention of the parties at the time of the purchase of the land and the construction of the house on it that the land being purchased and the house being constructed was to be their joint property has not been disputed. It has also not been disputed in the present case that the Claimant did contribute to the acquisition of the property by assuming joint liability, along with the Defendant, for the loans taken to purchase the land and to construct the dwelling house and, at the very least, contributed to the joint account from which these loans were repaid and from which too part at least of the pre-loan funding of both the house and the land was derived. There is also in this case a cogent reason given by the Claimant and not disputed by the Defendant as to why the land was purchased in the

name of the Defendant only, notwithstanding the common intention of the parties that the property would be jointly owned by them and notwithstanding the Claimant's contribution to its acquisition.

[21] In these circumstances, the authorities would clearly favour the position of the Claimant that she is jointly entitled, along with the Defendant, to the beneficial ownership of the land at Bellevue Estate and the dwelling house constructed on it, and the Court so rules.

[22] The question then becomes – what is the extent of the Claimant's beneficial interest in the aforesaid property; is it a 50% interest or some greater or lesser percentage?

[23] On the evidence, it is impossible to make a mathematical calculation of the relative interests of the parties in the property.

[24] The Claimant's evidence is that the parties made a 50-50 contribution to the initial \$10,000 payment for the land, then they took a joint loan to pay the balance of the purchase price, which loan was repaid from the proceeds of their joint account, which account was contributed to by both parties, with the Defendant for the most part making a greater contribution than the Claimant because of his higher earnings. It is also her evidence that the house was constructed with an initial investment of between \$103,000 and approximately \$126,600 (\$145,602 less approximately \$19,000) derived mostly from her funds, and then the balance from a mortgage loan taken jointly by the Defendant and her which was being repaid by them (until 2010) from their joint account.

[25] The Defendant's evidence is that the purchase of the land was financed from the joint account, whilst the construction of the house was financed from his savings and the joint account, to which

he was the major contributor, and from a mortgage loan from SAGICOR, which loan was being repaid from the joint account. It is also his evidence that the respective contributions of the Claimant and him were intended to be equal, but that “the Claimant has not lived up to her end of their agreement as to contributions” and that she, “without making her proper contribution ... at this late stage wishes to rely on an agreement that she never lived up to.”

[26] The Defendant has at all times insisted that the agreement, understanding and intent of the Claimant and him was that they would contribute equally to the cost of acquisition of the property, with the clear implication therefore that they would be entitled to equal shares in the property. He however moved from this position of the Claimant’s entitlement to an equal share in the property to a position of the Claimant having no interest whatsoever or an interest of no more than 10% to 15% based on his allegation of her failure to contribute equally to the joint account from which the loans on the property were repaid.

[27] I return to the basic principle emerging from the earlier-cited judicial authorities, that it is not the function of the court to allocate shares in a property to the parties claiming those shares based on events subsequent to the acquisition of the property, but only to ascertain what the entitlements of the parties were at the time of the acquisition of the property and to declare and give effect to them. On the facts and in the circumstances of this case, it is apparent that when the land was purchased and when the house was constructed on it, the agreement, understanding and intention of the parties was that the Defendant would hold the legal title to the property on behalf of the Claimant and himself equally; the fact that the Defendant (who holds the legal title to the property) became dissatisfied with the extent of the contribution made by the Claimant to the joint account from which

loans taken to finance the property were repaid, does not alter the property rights between the parties, unless the parties had agreed to do so.

[28] In any event, the facts and circumstances of this case invite the application of the maxim “equality is equity”.

[29] Support for the application of the maxim in a case such as this can be found in the words of Lord Morris of Borth-Y-Gest who, in delivering his opinion in the House of Lords in **Pettitt v Pettitt**¹, stated (on page 397 of the All England Law Reports) – “There will be some cases in which a court is satisfied that both the parties have a beneficial interest, and a substantial beneficial interest but in which it is not possible to be entirely precise in calculating their respective shares. In such circumstances, as Sir Raymond Evershed, M.R. said in **Rimmer v Rimmer**⁶, ‘equality almost necessarily follows’.”

[30] Further support for the application of the maxim can be found in the words of Lord Pearson who, in delivering his opinion in the House of Lords in **Gissing v Gissing**², expressed the view (at page 788 of the All England Law Reports) that there has been excessive application of the maxim “equality is equity”, but then stated that “it is reasonable to apply the maxim in a case where there have been very substantial contributions by one spouse to the purchase of property in the name of the other spouse but the proportion borne by the contributions to the total price or cost is difficult to fix.”

⁶ [1952] 2 ALL ER 863

[31] Lord Diplock also spoke to this issue in delivering his opinion in the House of Lords in **Gissing v Gissing**² and his words taken from page 792 of the All England Law Reports are worth quoting in full:

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

The same result however may often be reached as an inference of fact."

[32] In the present case, the inference which can reasonably be drawn from the conduct of the parties is that the property would be shared equally between them and, if it is contended and/or considered that no such inference can reasonably be drawn, then the maxim "equality is equity"

would be applied. Either way, the beneficial interest in the property belongs to the Claimant and the Defendant in equal shares, and the Court so rules.

[33] In terms of the Claimant's application for an order for the sale of the property based on two valuation reports provided by the parties and the postponement of the sale until the children of the marriage attain the age of 18 years, the Court accepts the contention of the Defendant that the Claimant is in a position to finance her own accommodation. This was specifically averred by the Defendant in his defence and alleged by him in his witness statement and has not been controverted by the Claimant. The Court will therefore order that the matrimonial home consisting of the house and land at Bellevue Estate be valued and sold and that the proceeds of sale, net of the amount outstanding on the mortgage loan, be divided equally between the Claimant and the Defendant.

[34] The order of the Court is as follows:

1. The Court hereby declares that the Claimant is the beneficial owner of a half share in the portion of land located at Bellevue Estate in the Parish of St. Peter's registered at the Land Registry as Parcel 179, Block 15 2287B, Registration Section South Central, together with the dwelling house erected thereon, and that the Defendant holds the legal estate in the aforesaid property in trust for the Claimant and himself in equal shares.
2. The Court hereby orders that the land and house be valued and sold and the proceeds of sale be divided equally between the Claimant and the Defendant, net of the amount outstanding on the mortgage loan on the property.

3. Costs to the Claimant to be agreed or otherwise assessed.

4. Liberty to apply.

Mario Michel
High Court Judge