EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANGUILLA

HCVAP 2011/004

BETWEEN:

PAUL S. WEBSTER

Appellant

and

LOIS DUNBAR

Respondent

Before:

The Hon. Mde. Janice Pereira — Justice of Appeal
The Hon. Mr. Davidson Kelvin Baptiste — Justice of Appeal
The Hon. Mr. Paul A. Webster — Justice of Appeal [Ag.]

Appearances:

Ms. Jean M. Dyer, with her, Ms. Dana Campbell for the Appellant
Mrs. Cora Richardson Hodge, with her, Ms. Sherma A. Blaize for the Respondent

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2012: May 15;
September 17.

Civil appeal – Divorce – Constructive Trust – House purchased in husband's name only – Common intention – Detrimental reliance – Whether wife's contribution gave her a beneficial interest or a share therein

The appellant, Dr. Paul S. Webster, and the respondent, Lois Dunbar, were born in Anguilla and Jamaica respectively. They are also American citizens and both reside in the United States. They commenced a romantic relationship in 1994 culminating in their marriage in 1996. In that same year, their marriage was declared a nullity by the District Court of Columbia as the appellant was found to be in a common law marriage with one Anita Ryan. During their relationship they had one child, who was born in 1995.

On 4th March 1999, the appellant entered into a written agreement with a John Bladon to purchase a parcel of land at Blowing Point, Anguilla, registered as Parcel 98 Block 2809B West Central Registration Section ("Parcel 98"), which land was registered in his name only. He paid the initial deposit and the subsequent payments by a cashier's cheque.

Subsequently, the appellant purchased a Mercedes Benz from L. P. Evans, car dealers in Miami, Florida which total list price was $35,278.36. The appellant paid $20,000.00 towards the purchase. The respondent traded in her Ford Explorer as part of the deal and a cheque in the amount of $15,276.36 was drawn on her account payable to L.P. Evans.

The parties later constructed a house on Parcel 98 to be used as their holiday home and spent time in the house as a couple from time to time. The major part of the cost of building the house was met by the appellant.

The parties ended their relationship in June 2006 and in October 2006 the respondent registered a caution in the land register of Parcel 98 to protect her interest in the property. Thereafter the respondent filed a claim in the High Court seeking declarations in respect of her beneficial interest in Parcel 98 alleging that she made substantial contributions to the purchase money for Parcel 98, the cost of the construction in the form of purchasing building materials with her own funds, the Mercedes Benz and certain personal items, including a Persian rug and chandeliers left in the house on Parcel 98. The appellant denied the respondent's claims and alleged that the respondent did not contribute towards the purchase of Parcel 98 and the construction of the house thereon. He also alleged that the $15,276.36 the respondent paid towards the Mercedes Benz was his money.

The trial judge, based on her assessment of the facts, found that the respondent has a beneficial interest in Parcel 98, the Mercedes Benz, the Persian rug and the chandelier and made certain declarations and orders which included awarding the respondent a 25% beneficial interest in the house, a 40% beneficial interest in the Mercedes Benz and a 60% interest in Persian rugs purchased by the respondent. The appellant appealed from the declarations and orders made by the trial judge.

Held: allowing the appeal to the extent of reducing the respondent's beneficial interest in Parcel 98 to 10%; confirming the other orders made by the trial judge; and ordering that the parties bear their own costs of the appeal and in the court below, that:

1. The basic principles are that an appellate court will not impeach the finding of facts by a first instance or trial court that saw and heard witnesses give evidence, except in certain very limited circumstances. A limited circumstance exists where a trial judge misdirects himself or herself and draws erroneous inferences from the facts. In that instance, an appellate court is in as good position as the trial judge to evaluate the evidence and determine what inference should be drawn from the proved facts. The trial judge, from her vantage point, drew an inference from the facts and made the assessment that the cheque for $62,500.00 went towards the purchase of Parcel 98. Consequently, the Court of Appeal is in as good in a position as the trial judge to draw its own inference. On that basis, there was no clear evidence as to when the decision to buy Parcel 98 was made and when the price of the land was discussed. What is certain is that the cheque was dated in August 1998 and the agreement for the sale was dated in March 1999. Further, the deposit of $60,000.00 and the subsequent instalments were all paid by cashier's cheque which *ex facie* were purchased by the appellant. Accordingly, the trial

judge's inference from the facts that the respondent contributed $62,500.00 towards the purchase price of Parcel 68 cannot stand.

Michael v Michael Antigua and Barbuda High Court Civil Appeal No. 15 of 2008 (delivered 29th June 2010, unreported) followed; Grenada Electricity Services Limited v Isaac Peters Grenada High Court Civil Appeal No. 10 of 2002 (delivered 28th January 2003, unreported) followed.

2. A person who does not have the legal title for a property and is claiming a beneficial interest in that property must prove that there was a common intention between the parties that they should share the beneficial title and on that common intention they acted to their detriment. Common intention can be established by direct evidence of an agreement between the parties that the person without the legal title will have a beneficial interest in the property and where there is no express agreement but the parties have conducted themselves in such a way as to show that they intend joint ownership of the property. In the present case, there was direct evidence establishing common intention to own the property jointly. Once it has been shown that there was a common intention that the respondent should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties is sufficient detriment to qualify her for a beneficial interest in Parcel 98. The respondent's purchase of blinds, building materials and general assistance in the construction process are acts done by her to her detriment and would therefore qualify her for a beneficial interest in Parcel 98.

   Grant v Edwards and Another [1986] 2 All ER 426 applied; Lloyds Bank Plc. v Rosset and Another [1991] 1 AC 107 applied; Eves v Eves [1975] 3 All ER 768 distinguished.

3. The respondent's claim to a beneficial interest in Parcel 98 is based in large part on her alleged financial contribution to the purchase price. Since she has failed to discharge the evidentiary burden of proving that she contributed the cheque in the amount of $62,500.00 to the purchase money it follows that the cheque cannot be used to show either common intention or detrimental reliance. Based on her contributions and disregarding the $62,500.00 cheque an award of a 10% interest in the property is warranted.

4. There was ample evidence to support the judge's findings that the respondent acquired a beneficial interest in the Mercedes Benz, Persian rugs, chandeliers and paintings. These awards were made on the bases of common intention and findings by the judge that they were purchased by the respondent. The Court has found no reason to upset these findings.

JUDGMENT

[1] WEBSTER JA [AG.]: This is an appeal by Dr. Paul S. Webster against the judgment delivered on 27th May 2011 awarding the respondent, Lois Dunbar, the following:

(a) a 25% beneficial interest in property in Anguilla registered in the appellant's name;

(b) a 40% beneficial interest in a Mercedes Benz motor car valued at $20,000 registered in the appellant's name;

(c) a 60% interest in Persian rugs purchased by the respondent;

(d) chandeliers and a painting valued at $2,000.00;

(e) prescribed costs.

Background

[2] The appellant was born and grew up in Anguilla. He moved to the United States and qualified as a medical doctor. He is an American citizen. The respondent is a Jamaican by birth and also an American citizen. She is a registered nurse. Both parties reside in the United States.

[3] The parties met in 1994 and started a romantic relationship. They got married in 1996. However, the appellant was in a common law marriage with one Anita Ryan and in November 1996 the District Court of Columbia ruled that he was still married to Mrs. Ryan. His marriage to the respondent was therefore a nullity. There is one child born to the parties in 1995.

[4] The couple visited Anguilla from time to time. Sometime in 1998 they saw and became interested in purchasing a piece of land at Blowing Point, Anguilla registered as Parcel 98 Block 2809B West Central Registration Section ("Parcel 98"). On 4th March 1999, the appellant entered into a written agreement with the owner of Parcel 98, John Bladon, to purchase the property for US$120,000.00. Later in 1999 Parcel 98 was transferred to the appellant for a stated consideration

of US$80,000.00. The consideration was understated in order to minimise Dr. Webster's liability for stamp duty on the transfer.

[5] By this time the respondent had retired from nursing and had set up a company called Medrec Inc. Medrec collected the fees of various doctors, including the appellant's, and paid them over to the doctors after retaining a commission. The judge found that Dr. Webster's income was greater than the respondent's.

[6] The purchase money for Parcel 98 was paid by a deposit of $60,000.00 on the signing of the agreement for sale in March 1999 and the balance of $60,000.00 in three instalments. The respondent's case is that she contributed $62,500.00 of the purchase money. More will be said about this contribution.

[7] The parties constructed a house on Parcel 98 to be used as their holiday home and spent time in the house as a couple from time to time. The major part of the cost of building the house was met by Dr. Webster. The respondent's case is that she made substantial contributions to the cost of the construction in the form of purchasing building materials with her own funds and the proceeds of a cheque for $21,935.00 from the United States Internal Revenue Service payable jointly to the parties.

[8] There is very little evidence of pooling of financial resources between the parties. They had separate properties in America, separate bank accounts, and generally did not pool their resources.

[9] By June 2006 unhappy differences had developed between the parties and the relationship ended. In October 2006 the respondent registered a caution in the land register of Parcel 98 to protect her interest in the property. She also filed for divorce in Florida but the petition was dismissed in February 2009 on the ground that the marriage was void on account of the appellant's common law marriage to Anita Ryan.

[10] In June 1999, Dr. Webster purchased a Mercedes Benz from L. P. Evans, car dealers in Miami, Florida. The retail order for the sale of the vehicle lists the price at $34,500.00. At the time the respondent owned a 1995 Ford Explorer which she traded in as a part of the deal to purchase the Mercedes Benz. The retail order gives a trade-in credit of $12,000.00 and added $10,921.77 to the price as the balance owed to a finance company on the Ford Explorer, giving a net value of the trade-in of $1,078.23. After factoring in other miscellaneous charges the final price was $35,278.36. The $35,278.36 was paid by a deposit of $20,000.00 by the appellant, and the balance of $15,276.36 by a cheque drawn on the respondent's account payable to L.P. Evans. The appellant's case is that the $15,276.36 is his money. The Mercedes Benz was used by the appellant. In 2004, he shipped it to Anguilla and in 2007 he gave it to his sister.

Court Proceedings

[11] On 11th June 2009, the respondent filed a claim in the High Court seeking declarations in respect of her beneficial interest in Parcel 98, the Mercedes Benz and certain personal items left in the house on Parcel 98. The appellant denied all the respondent's claims and the trial was heavily contested. The judge delivered a written judgment in which she made the declarations and orders set out in paragraph 1 above, and made consequential orders.

[12] The appellant appealed against the findings of the judge that the respondent has a beneficial interest in Parcel 98, the Mercedes Benz, the Persian rug and the chandelier. These findings are the result of findings of fact by the trial judge and the result of this appeal will depend in large part on this Court's assessment of those findings.

Court of Appeal's Approach to Findings of Fact

[13] The general rule is that the Court of Appeal will only interfere with findings of fact by a trial judge in special circumstances. This approach is clearly set out by the former Chief Justice Sir Hugh Rawlins in Michael v Michael:[1]

> "In Golfview Development Limited v St. Kitts Development Corporation and Another,[16] *[Saint Christopher and Nevis Civil Appeal No. 17 of 2004 (20th June 2007, at paragraphs 23 and 24*] this court restated the settled principles that are applicable where an appellant seeks to impeach fact-finding by the trial judge. The basic principles are that an appellate court will not impeach the finding of facts by a first instance or trial court that saw and heard witnesses give evidence, except in certain very limited circumstances. An appellate court may, however, interfere in a case in which the reasons given by a trial judge are not satisfactory, or whether it is clear from the evidence that the trial judge misdirected himself. Where a trial judge misdirects himself or herself and draws erroneous inferences from the facts, an appellate court is in as good position as the trial judge to evaluate the evidence and determine what inference should be drawn from the proved facts. Where therefore there is an appeal against the finding of facts, the burden upon the appellant is a very heavy one. An appellate court will only interfere if it finds that the court of first instance was clearly and blatantly wrong, or, as it is sometimes more elegantly stated, exceeded the generous ambit within which reasonable disagreement is possible."

[14] However, the general rule does not apply when the findings by the judge are not based on his or her assessment of the credibility of the witness but on the inferences to drawn from the evidence. In this situation the appellate tribunal is in as good a position as the trial judge to draw inferences from the facts found. This approach was summed up by the former Chief Justice, Sir Dennis Byron, in Grenada Electricity Services Limited v Isaac Peters[2] as follows:

> "This however includes an important limitation and requires the court to draw a distinction between a finding of specific fact and finding of fact which in reality is an inference from facts specifically found. To use different words the court must distinguish between the perception and evaluation of facts. It is in the finding of specific facts or the perception of facts that the court is called on to decide on the basis of the credibility of witnesses. When this is the position, an appellate court must exercise

[1] Antigua and Barbuda High Court Civil Appeal No. 15 of 2008 (delivered 29th June 2010, unreported), para. 23.

[2] Grenada High Court Civil Appeal No. 10 of 2002 (delivered 28th January 2003, unreported), para. 7.

> caution and have a rational basis for differing with the trial judge who had the advantage of observing the witnesses in the process of giving the testimony. On the other hand the court may have to consider a situation where what is in dispute is the proper inference to be drawn from facts, or in other words the evaluation of facts. In such cases the appellate court is generally in as good a position to draw inferences or to evaluate as the trial judge."

[15] In this case both the general and special approaches are relevant. The judge had the benefit of seeing the parties give their evidence and observing their demeanour. She was clearly unimpressed with the credibility of both parties noting at paragraph 18 of the judgment that:

> "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."

[16] Faced with two unreliable witnesses the trial judge had to go through a selective process of determining which witness' evidence to accept on each important issue in the case. This Court places great reliance on her findings of fact. However, where those findings are based on inferences drawn from the facts this Court is in as good a position to make its own findings.

Legal Principles

[17] The legal principles relating to the acquisition of a beneficial interest in property by a person who does not have the legal title are well settled by the courts in England and the Eastern Caribbean. In its simplest terms it is that the claimant must prove that there was a common intention between the parties that they should share the beneficial title, and the claimant acted to his or her detriment on the basis of that common intention.

[18] In determining whether the parties had formed a common intention that the respondent should have a beneficial interest in Parcel 98 the trial judge gave a brief overview of development of the relevant law and relied on several cases from the Eastern Caribbean Courts and the English Courts, including passages from

Gissing v Gissing,[3] Lord Denning and Lord Fox in Button v Button,[4] Nourse LJ and Sir Nicholas Browne-Wilkinson in Grant v Edwards and Another[5] and Lord Budge of Harwich in Lloyds Bank Plc. v Rosset and Another,[6] and concluded at paragraph 35 of her judgment that:

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

[19] The trial judge further adopted the statement of general approach to the issue of determining the parties' intention of Baroness Hale in Lynn Anne Abbott v Dane Norman Lawrence Abbott[7] as follows:

> "The parties' whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to its ownership."

[20] The trial judge was required to assess the conduct of the parties to determine whether they had formed a common intention that Parcel 98 was to be shared beneficially coupled with evidence that the respondent acted to her detriment in reliance on that common intention.

Common Intention

[21] Common intention can be established in one of two ways. Firstly, by direct evidence of an agreement between the parties that the person without the legal title will have a beneficial interest in the property. Secondly, where there is no express agreement but the parties have conducted themselves in such a way as to show that they intend joint ownership the court will draw the inference of a common intention that they should both have a beneficial interest in the property. In both cases the claimant must go on to prove that he or she acted to his or her

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[3] [1970] 2 All ER 780.
[4] [1968] 1 All ER 1060.
[5] [1986] 2 All ER 426.
[6] [1991] 1 AC 107.
[7] [2007] UKPC 53 at para. 19.

detriment on the basis of the express or inferred common intention that in so acting he or she would acquire a beneficial interest.

[22] The formation of a common intention by an express oral agreement is illustrated by the case of Grant v Edwards and Another. The female claimant, a married woman, was in a common law relationship with the defendant. The parties purchased a house in the defendant's name and the name of his brother. He told the claimant that her name could not go on the title because it would cause some prejudice in pending matrimonial proceedings between the claimant and her husband. The purchase price was made up of a cash contribution by the defendant and two mortgages. The claimant made indirect contributions to the repayment of the mortgages by sharing the household expenses, housekeeping and bringing up the children. The Court of Appeal allowed her appeal finding that the defendant's statement that the claimant's name would have been on the title deed but for her pending matrimonial proceedings was sufficient to show the necessary common intention, and that she had acted to her detriment in reliance on that common intention. In dealing with cases of an express agreement on common ownership Nourse LJ noted:

> "There is another and rarer class of case, of which the present may be one, where, although there has been no writing, the parties have orally declared themselves in such a way as to make their common intention plain. Here the court does not have to look for conduct from which the intention can be inferred, but only for conduct which amounts to an acting on it by the claimant."[8]

This illustrates that in cases of express agreements, albeit oral, the relevance of conduct is to show that the claimant acted on the agreement to his or her detriment, and not to prove the agreement. The oral agreement constitutes the common intention.

[23] In Lloyds Bank Plc. v Rossett and Another, the wife's allegation of an oral agreement with her husband for joint ownership was rejected by the trial judge but he found that there was a common intention for beneficial ownership by virtue of

[8] [1986] Ch 638 at 647.

her conduct in working on the renovation of the house. The Court of Appeal allowed an appeal by the mortgagee of the house finding that her conduct was not sufficient to justify the inference of common intention. The leading judgment of the House of Lords was delivered by Lord Bridge of Harwich who noted at page 132 that:

> "Once a finding to this effect is made [of an express agreement] it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel. In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust."

At pages 133 to 134 Lord Bridge continued:

> "I cannot help thinking that the judge in the instant case would not have fallen into error if he had kept clearly in mind the distinction between the effect of evidence on the one hand which was capable of establishing an express agreement or an express representation that Mrs. Rosset was to have an interest in the property and evidence on the other hand of conduct alone as a basis for an inference of the necessary common intention."

Guided by these principles I will now assess the judge's finding that there was a common intention for joint beneficial ownership between the parties which she inferred from the conduct of the parties.

The Cheque for $62,500.00

[24] The respondent's evidence is that she gave the respondent $62,500.00 towards the purchase price in the form of a cheque drawn on her account payable to herself which she used to purchase a cashier's cheque. Her counsel at the trial suggested to the appellant in cross-examination that the cheque was applied to the down payment of $60,000.00 mentioned in the agreement for the sale of

Parcel 98. The appellant did not accept the suggestion. The front of the cheque was produced in evidence and it contained the memorandum "Anguilla Land". The judge attached great significance to the cheque in finding that the respondent contributed the $62,500.00 " ... since the clear memorandum on the cheque indicates that it relates to the Anguilla land".[9] This is a finding of fact that is based on an inference drawn by the judge from the memorandum on the cheque and this Court is in as good a position as the judge to draw its own inference. When viewed in the context of what was going on between the parties in August 1998 when the cheque was written I am not satisfied that its proceeds were used towards the purchase Parcel 98 for the following reasons:

(a) The $62,500.00 would have been a significant contribution to the purchase price and yet it was not specifically pleaded.

(b) In paragraph 6 of her witness statement Ms. Dunbar said she gave Paul the $62,500.00 " … since he was short on his half of the amount". I am not sure exactly what the respondent meant by these words but they do not suggest that she was making her contribution to the purchase money.

(c) The cheque is drawn by Ms. Dunbar payable to herself. She did not produce the back of the cheque which would have given some indication how it was negotiated.

(d) The cheque is dated 21st August 1998. There is no clear evidence when the decision to buy the land was made, but in August 1998 the discussions, if any, about the land would have been at a very early stage. There is no evidence that a price was discussed, far less agreed with the owner at this stage. The first evidence of price of the land was in the agreement for sale that was signed on 4th March 1999, some seven months after the cheque was issued. It is strange that the respondent

[9] Para. 58 of the judgment.

would have issued a cheque to herself in August 1998 as a contribution to a purchase price that was not yet discussed and agreed.

(e) There is no evidence that the proceeds of the cheque was paid over to the appellant, nor of what happened to the money for the seven months up to March 1999 apart from the respondent's bald assertion that she bought a cashier's cheque.

(f) The deposit of $60,000.00 and the three subsequent instalments to make up the balance of the purchase money were all paid by cashier's cheque which *ex facie* were purchased by Dr. Webster.

[25] This is the respondent's claim to a beneficial interest in Parcel 98 based in large part on her financial contribution to the purchase price. She has failed to discharge the evidentiary burden of proving that she contributed the $62,500.00 to the purchase money. The memorandum on the cheque is not sufficient to displace the overwhelming evidence suggesting that the cheque was not paid over to the appellant, and I so find. It follows that the cheque cannot be used to show either common intention or detrimental reliance.

Express Agreement - Appellant's promise of ownership

[26] The judge found as a fact that the appellant told the respondent that her name would not go down on the title because she was not a citizen of Anguilla, but that he would add her name after she became a citizen. This finding is based on the judge's assessment of the witnesses and there is no basis for this Court to interfere. However, the judge did not go on to treat this as direct evidence of common intention and in fact found that there was no evidence of common intention.[10] These facts are similar to the facts in Grant v Edwards and Another where the Court of Appeal found that the respondent's statement to the claimant that her name could not go down on the title because of her pending matrimonial proceedings was sufficient to show the necessary common intention. Following

[10] Para. 68 of the judgment.

the decision in Grant v Edwards and Another, I find that the appellant's conduct in promising to put the respondent's name on the title is direct evidence of common intention that the parties intended to own the property jointly.

[27] Before leaving the issue of common intention, I will deal with a point raised by counsel for the appellant, Ms. Jean Dyer, out of deference to her very able submissions. She submitted that the direct evidence that is required to prove common intention must contain two elements, namely, the agreement or understanding between the parties that the claimant would acquire an interest in the property owned by the other party, and a corresponding undertaking by the claimant to contribute to the acquisition of the property. A mere agreement to give a beneficial interest is not enough and is not enforceable. As an example she cited Eves v Eves[11] where Browne LJ and Brightman J found that the agreement between the parties was for the female claimant to acquire an interest in the defendant's property in return for her labour in repairing and maintaining the house. Brightman J observed that the court would give effect to this type of arrangement.

[28] I do not agree that the agreement or understanding between the parties must have two elements – the agreement to give the beneficial interest in return for some contribution or conduct from the claimant. Nor do I agree that the claimant's agreement to contribute is essential. What is required is direct evidence of a common intention that the claimant would acquire a beneficial interest, and that the claimant acts to his or her detriment in reliance on that understanding. In Grant v Edwards and Another, the agreement between the parties did not contain an understanding by the claimant to contribute, but she acquired an interest by her actual contributions. In Eves v Eves, the agreement contained both elements, but the claimant actually performed the work she agreed to perform. Nourse LJ noted in Grant v Edwards and Another that without the

[11] [1975] 3 All ER 768.

actual work it is doubtful that the Court in Eves v Eves would have granted an interest to the claimant.[12]

[29] In a case where an oral agreement is alleged the claimant must prove by direct evidence that the parties had a common intention that the claimant would acquire a beneficial interest in the defendant's property, with or without an undertaking to contribute, and the claimant acts to his or her detriment in reliance on that agreement.

Detrimental Reliance

[30] Having ruled out the possibility of detrimental reliance based on the respondent's cheque for $62,500.00 she is left with the cheque for $21,935.00 from the IRS that was used towards the purchase of blinds for the house, her contributions to the purchase of other building materials which was not significant in the context of the overall cost of construction, and her general assistance in the construction process. In Grant v Edwards and Another, Sir Nicholas Browne-Wilkinson VC noted that:

> "As at present advised, once it has been shown that there was a common intention that the claimant should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties, is in my judgment, sufficient detriment to qualify."[13]

[31] The respondent acted in reliance on the appellant's promise of joint ownership when she made her contributions and these qualify her for a beneficial interest. Based on her contributions as set out in paragraph 30 above and disregarding the $62,500.00 cheque for the reasons given in paragraphs 24 and 25 above, I would award her a 10% interest in the property and revise the judge's assessment of 25% accordingly.

[12] Per Nourse LJ in Grant v Edwards and Another at p. 648.
[13] [1986] Ch 638, p. 657.

The Mercedes Benz

[32] The Mercedes Benz was purchased for $35,278.36 made up of a deposit of $20,000.00 paid by the appellant and the balance of $15,278.36 by a cheque drawn on the respondent's account for the balance. The judge found that the respondent's claim was supported by the documentary evidence in the form of the cheque. The judge also accepted her evidence that she traded in Ford Explorer motor vehicle when the Mercedes Benz was purchased. The trade-in is corroborated by the retail order from LP Evans.

[33] There was ample evidence to support the judge's findings that the respondent acquired a beneficial interest in the car which she assessed at 40% of the value of the car.

[34] The appellant also appeals against the value of $20,000.00 attributed to the value of the Mercedes Benz without any evidence of value to make the assessment.

[35] In Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton et al[14] which was relied on by both parties, Barrow JA repeated the well known principle that it is the claimant's burden to produce evidence of loss or damage. Barrow JA went on to point out that the general rule does not mean that "the court is inescapably driven to refuse to award any amount for an undoubted loss",[15] citing with approval the decision of the Privy Council from Trinidad and Tobago in Greer v Alstons Engineering Sales & Services Ltd.[16] Barrow JA went on to award damages for the lost personal items as nominal damages which he said:

> "... in this context, did not mean small damages but meant damages that were substantial provided they were not out of scale."[17]

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[14] Antigua and Barbuda High Court Civil Appeal No. 22 of 2004 (delivered 6th February 2006, unreported).
[15] Ibid, para. 23.
[16] [2003] UKPC 46.
[17] Antigua and Barbuda High Court Civil Appeal No. 22 of 2004 (delivered 6th February 2006, unreported), para. 23.

[36] In this case the trial judge had evidence that the Mercedes Benz was purchased for $35,278.36 in 1997, took account of depreciation, and assessed the value at $20,000.00. It would not have been possible to get a current valuation since the appellant had given the car to his sister. The $20,000.00 may be a little high but not so high as to be wrong in principle. Accordingly, I would not disturb the award for the Mercedes Benz.

Personal Items

[37] The trial judge awarded the respondent 60% of the value of the Persian rugs which she valued at the purchase price of $16,500.00, and $2,000.00 nominal damages for the chandeliers and painting. These awards were made on the bases of common intention and findings by the judge that they were purchased by the respondent. I have not found any reason to interfere with the judge's findings for these articles.

Conclusion

[38] I would allow the appeal to the extent of reducing the respondent's beneficial interest in Parcel 98 to 10% and confirm the other orders made by the trial judge. Both parties have enjoyed limited success on the appeal and I would order that the parties bear their own costs of the appeal and in the court below.

Paul A. Webster [Ag.]
Justice of Appeal

I concur.

Janice M. Pereira
Chief Justice [Ag.]

I concur.

Davidson Kelvin Baptiste
Justice of Appeal