

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

CLAIM NO. ANUHCV 2011/0635

BETWEEN:

TECKLA EDWARDS

Claimant

and

DR. ALVIN G. EDWARDS

Defendant

Appearances:

Mr Dane Hamilton, QC and Mr D. Raimon Hamilton for the Claimant
Ms E. Ann Henry and Ms Stacey-Ann Saunders-Osbourne for the Defendant

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2012: May 16
November 5
.....

JUDGMENT

[1] MICHEL, J: The parties to this case are husband and wife. They had an intimate relationship with each other since February 1987, which relationship produced a child born to them on 7th August 1988. They began living together in August 1989 and got married in September 1990. They added to their family after their marriage, with a second child being born to them on 27th April 1991 and a third on 18th August 1994.

[2] In August 1989 the parties had moved into a dwelling house at Hodges Bay owned by the husband. Following the passage of Hurricane Georges in 1998, the house was damaged and required repairs, to facilitate which the family moved into rented accommodation at Lightfoot in October 1998 until June/July 1999 when they moved back into the house at Hodges Bay. In December 2002 they moved into a new house at Mercer's Creek, which was constructed between August or December 2001 and December 2002 on land owned by the husband.

[3] There is evidence of marital breakdown from as far back as June 2001 when the husband wrote to the wife (via email) to inform her of his decision to separate from her, but the parties have continued to reside in the house at Mercer's Creek and apparently neither of them has sought to terminate the marriage by divorce. Be that as it may, by fixed date claim filed on 7th October 2011, the wife instituted the present proceedings against the husband seeking - a declaration that the house and land at Mercer's Creek is held by her husband in trust for the two of them as beneficial tenants in common in equal shares; rectification of the land register; and an order for sale of the property. In his defence filed on 1st December 2011, the husband denied that his wife was entitled to any of the relief claimed by her.

[4] The evidence in this case came from affidavits filed by the wife (Teckla Edwards), by her witness (Wayne Hunt) and by the husband (Dr Alvin Edwards) and from the oral testimony of the three of them.

[5] In her affidavit filed on 7th October 2011, Mrs Edwards alleged that at the time of her marriage to Dr Edwards in September 1990, he was a self-employed Ophthalmologist and she was employed with LIAT as a Customer Service Representative. There was a disparity in their respective incomes in

that she earned \$3,200 per month, while he earned much more, but this was of no consequence, because their ideal was to provide for their family. She and her husband were quite comfortable with each other and had regular discussions between them as to how they would share and discharge their matrimonial responsibilities. The way in which they ordered their living arrangements was that her husband would take care of the payment of the mortgage on and the utilities for the matrimonial home, whilst she would be responsible for purchasing the groceries, paying the household helper and the gardener and supplying the children and herself with clothing and the children with school uniforms and school supplies. She and her husband were happy and discussed the better positioning of the family and there was never any thought given to the possibility that the marriage would encounter difficulties eventually leading to its end.

[6] Mrs Edwards alleged that in 1995 and 1998 their home in Hodges Bay was severely damaged by hurricanes and had to be repaired. On the first occasion, the repairs were carried out with the proceeds of the insurance of the house, but on the second occasion they had to repair the house at their own expense. Between October 1998 and June/July 1999 they had to stay in rented premises whilst the house in Hodges Bay was being repaired. Both she and her husband made several trips to Puerto Rico to purchase replacement fixtures, furnishings and appliances for the house and she journeyed to Hodges Bay on numerous occasions to overlook the conduct of the repairs to the house. Her husband had limited funds during this period because of his other financial commitments and, having sat and discussed it, it was decided that her financial assistance was required to complete the repairs, to which end she contributed just over \$6,000.

[7] Mrs Edwards alleged that she and her husband operated as a team during those happy times. When in 2000 it became necessary to purchase a vehicle for the benefit of the family, and her

husband was unable at that time to access a loan commercially because of his high debt ratio, they agreed that she would obtain the loan for the purchase of the vehicle, which she did. Later in 2001, her husband decided to purchase another vehicle, he discussed this with her and they agreed that he would make use of her fixed deposit at the Bank of Antigua to secure the loan, but he would pay the monthly instalments, which he later failed to do, resulting in the bank deducting \$11,000 from her account to cover bank charges. She did not complain or demand the return of the \$11,000 because she understood that it was necessary to assist her husband in his endeavours to achieve a better living standard for the family.

- [8] Mrs Edwards alleged that, because of the damage sustained to their home at Hodges Bay, they were always fearful of further damage in the event of another storm and, in their discussions, her husband expressed the position that, apart from the fear of further damage to the house, as a family unit they deserved better living conditions and he wanted a house in which he could comfortably entertain his friends and colleagues. It was decided (according to her) to embark on the construction of another home on lands owned by her husband at Mercer's Creek. In discussions with her in the ensuing period, it was decided to sell the house at Hodges Bay and to use the proceeds of sale to pay off the mortgage on the Hodges Bay house and to put the balance towards a mortgage for the new house at Mercer's Creek. In the discussions between her and her husband, they decided that her husband would acquire the loan for the construction of the house and that she would acquire another loan for the purchasing of the furnishings, appliances and decorations and for landscaping. She alleged that it was a joint endeavour on their part and there was nothing in their discussions over the ensuing months which indicated that the provision of a new home was other than for their joint benefit.

[9] Mrs Edwards alleged that she was very much involved in the building and furnishing of the house at Mercer's Creek and in making it a comfortable home for their family. She made several trips to the house during its construction and she provided for the fencing of the yard, the construction of the wall at the entrance and at the gate, the roundabout, the walkway which leads to the entrance door, the planter, the enclosed connection between the main house and the garage, the pathway between the rear entrance to the patio, two stepping stones path walkways, the dog house and the railing around the upstairs and downstairs patios. She alleged too that she purchased many trees, plants, flowers and fruit trees; paid for the services of a landscaper to assist in beautifying the surrounding land; contributed \$10,000 towards the kitchen and bathroom units; and paid for the Jacuzzi, the shower, the toilet and the vanity.

[10] Mrs Edwards alleged that her husband was responsible for discharging the monthly mortgage instalments and she was responsible for the upkeep of the home, which included paying for the services of a gardener and household helper and providing for the groceries. She also had to pay for internet and cable services and she provided the children with clothing apparel, shoes and uniform, which continued until the two eldest ones left for college in the United States. She alleged that, although her husband lives in the house and "partakes of any food stock, he did not provide a dollar towards its acquisition until the year 2009 when [she] wrote to him complaining about [her] inability to take care of paying for the groceries and gardener all by [herself]."

[11] Mrs Edwards alleged that between 1989 and 2002 she was employed by LIAT and earned a monthly salary of \$3,200 from 1989 to 1995 and \$3,700 from 1995 to 2002 and that, upon her retirement in 2002, she received a substantial severance package which she used in part on household expenses. From 1997, she also operated and managed a small clothing store.

Throughout the period of her marriage, her husband never contributed to her maintenance and upkeep; she provided for all of her medical expenses and feminine needs; she did all of this feeling secure in the knowledge that the advancement of her husband's professional career and entrepreneurship were essentially intended and designed for the benefit of both of them and the family; she partnered him and considered throughout the years that they were ultimately engaged in a partnership for the benefit of both of them, as he insisted during their intimate discussions.

[12] Mrs Edwards also alleged that her husband benefited from her discounted airfares as a LIAT employee, which assisted him in conducting his practice in St. Kitts, and that he requested her to use her credit card to purchase airline tickets for herself and the children to travel to Miami to attend his daughter's graduation, which payment he promised to reimburse but never did, resulting in her having to bear the full expense and interest.

[13] Mrs Edwards concluded her affidavit evidence with the assertion that she was of the view that for over twenty years she partnered her husband on the basis that on their journey as a married couple with children, everything acquired was for their joint benefit and would eventually inure for the benefit of the children, which view was encouraged and not disputed by her husband in their private discussions. She then requested the Court to make an order that the matrimonial home at Mercer's Creek registered in the name of her husband is held by him on trust for the two of them as beneficial tenants in common in equal shares.

[14] In her oral testimony at the trial, Mrs Edwards stated that she was relying on the evidence contained in her affidavit. There were two bits of evidence which emerged from the cross-examination of her which are noteworthy – the first was her admission that by June 2001 the

marital relationship between her and her husband had broken down, although she added that it was not over, and the second was her express denial that there was no discussion or undertaking between her and her husband that the house at Mercer's Creek would be their joint property and her assertion that "this is what he said; this is what was agreed from the very beginning; it was intended to be used for the family benefit."

[15] In re-examination, Mrs Edwards attempted to clarify what she meant by her statement under cross-examination that the marriage had broken down but it was not over. She said that she meant that she and her husband had many problems, but they decided that they were going to continue in the relationship, and they continued in the relationship in spite of the problems.

[16] The second and final witness for the Claimant was Mr Wayne Hunt. In his affidavit filed on 3rd February 2012, Mr Hunt alleged that he is a joiner engaged in furniture building and repairing since about 1981. He alleged that whilst the matrimonial home was under construction, he was contacted by Mrs Edwards to do some work on the house. She asked him to build some cupboards in the utility room and the clothes' closets and he also hanged the doors on the closets. He was given the money by Mrs Edwards to purchase all other materials which were required for the job, except for the doors, which (as far as he was aware) were imported. In addition, he alleged that he was asked by Mrs Edwards to construct the railing around the patio downstairs, which took about one month to complete and cost in the region of \$7,494. He alleged that any work which he performed on the house was done on the instructions of Mrs Edwards and that she paid him for all work done by him on the house.

[17] In his oral testimony, Mr Hunt merely asserted that the content of his affidavit was his evidence in the case. He was not cross-examined.

[18] In his affidavit filed on 1st December 2011, Dr Edwards alleged that although he had an intimate relationship with the Claimant from prior to their marriage, their relationship was never particularly close and they did not speak to each other much or discuss many things prior to or even after their marriage. Theirs, he alleged, was an unhappy marriage from the very beginning; they had no real relationship. He alleged that, contrary to his wife's statements in her affidavit, he has no recollection of having any discussions with her as to how they would share household expenses. It was his recollection that he took responsibility for maintaining the household and he only requested his wife to assist in paying for the household helper; all other expenses were taken care of by him. He recalled that at the earliest stages of their marriage, he gave his wife \$300 per week for groceries. He alleged that it may be that his wife spent some of her own money when she went to do grocery shopping, but he was not made aware of this. He alleged that he alone paid for the gardener; that he alone paid for the children's school fees, uniforms and school supplies; and, although his wife may have purchased some items for the children over the years, he was the one who shouldered the responsibility for the needs of the children, including their university education.

[19] Dr Edwards denied his wife's claim that she made any contribution to the repair of his house at Hodges Bay following the hurricanes in 1995 and 1998, and he alleged that these repairs were paid for by him from the proceeds of the insurance policy he maintained on the house and from monies advanced by him. He denied that his wife was ever involved in the repair of or the supervision of the work on the Hodges Bay house. He alleged that the damage to the house at Hodges Bay by the two hurricanes prompted him to do what he had contemplated for some time,

that is, to construct a new home for his family at Mercer's Creek, because he had become unhappy about living at Hodges Bay because there were problems with the house (including plumbing problems and cracks in the walls) which he thought made it an unsatisfactory home for the children. He alleged that, save for his asking his wife to speak to the architect about the layout of the house, he had no discussion with her concerning the construction of the house at Mercer's Creek. He alleged that the construction of the house was funded by a loan for \$941,000 which he took from ACB Mortgage & Trust Company Limited. He alleged too that in addition to using the land as security for the loan, he was also required to put in money as a deposit and to assign a life insurance policy on his life as additional security. He alleged that over the period of construction of the house, he injected \$200,000 over and above the amount which he had borrowed from the bank. His wife played no part and was not involved in the funding of the house at Mercer's Creek. He alone pays the monthly mortgage instalments of \$9,723.72 and the monthly insurance premium of \$1,576.32.

[20] Dr Edwards alleged that he acquired the land at Mercer's Creek as a replacement for a parcel of land purchased by him from the Government in 1986, and that by the time the construction of the house was underway his marriage was over. He alleged that his wife constantly complained that he did not trust her, which he said was true, because he discovered that she had been unfaithful to him. He also alleged that he did enter into a relationship with someone else when it became apparent that his wife had withdrawn from him physically and emotionally and had no interest in continuing their marriage. He alleged too that he confirmed this in a letter to her dated 14th June 2001, by which time construction of the house at Mercer's Creek had not even started.

[21] Dr Edwards alleged that when they were moving into the house at Mercer's Creek, there was furniture at the Hodges Bay house to furnish the new house, but his wife told him that she wanted new furniture and appliances for the Mercer's Creek house and that she would buy them. He alleged that he did not object to this and his wife purchased these items mostly from abroad and he paid the freight and customs duties for them. His wife also purchased "the decorations" for the house. He however denied that she did landscaping of the property and asserted that the only work in the garden was done by gardeners engaged by him.

[22] Dr Edwards denied having any discussions with his wife about any joint endeavour in the construction of the house at Mercer's Creek or managing his affairs in a way which could lead her to believe that the house was for their joint benefit. He alleged that everything that he has done has been for his children. He alleged too that whilst his wife may have made arrangements for certain things to be done around the Mercer's Creek house, including some of those alleged in her affidavit (like "provid[ing] for the fencing of the yard, the construction of the wall at the entrance and at the gate, the roundabout, the walkway which lead to the entrance door, the planter, the enclosed connection between the main house and the garage, the pathway between the rear entrance to the patio, two stepping stones path walkways, the dog house and the railing around the upstairs and downstairs patios") he is not aware of her paying money for any of those things to be done, except for the building of the dog kennels. He alleged that the building of the house and the appurtenances to it were all included as part of the construction and were paid for from the mortgage loan taken by him. He alleged that his wife has a flower garden at the house which she maintains and he is aware that she has purchased flower trees, stones and soil for the garden, but he denied that she purchased or planted fruit trees or that she engaged any landscaper to assist in beautifying the lands around the house. He denied that his wife contributed \$10,000 for the kitchen

and bathroom units or that she paid for the shower, the toilet or the vanity, as claimed in her affidavit. He alleged that he recalled asking his wife to assist him in paying \$10,000 to Mr Winston Phoenix (who was constructing the kitchen and bathroom units) when Mr Phoenix requested a further payment in that amount and he (Dr Edwards) was not able to make the payment at that time; he requested the assistance of his wife, who loaned him the money, which he repaid to her. He agreed though that it was his wife who purchased the Jacuzzi, she having insisted on it at the time of the move from the Hodges Bay house to the Mercer's Creek house.

[23] Dr Edwards alleged that (to his knowledge) his wife put the proceeds of her severance payment from LIAT on a fixed deposit account at Bank of Antigua and he is not aware of her spending any of it on household expenses. He admitted that he used discounted air tickets (made possible by his wife's employment with LIAT) in order to travel to St. Kitts, but he denied any knowledge of the trip to Miami referred to by his wife in her affidavit.

[24] Dr Edwards concluded his affidavit evidence with a denial that there was any agreement between him and his wife that the acquisition of the house at Mercer's Creek was intended to be jointly owned by them or that it was a joint enterprise entered into by them.

[25] Under cross-examination, Dr Edwards controverted much of the evidence of Mrs Edwards as to her contributions to the acquisition and/or improvement of the Mercer's Creel house or the Hodges Bay house. He also controverted her evidence of an understanding or agreement between them about the acquisition or improvement of any of these houses or even about their living arrangements in the home. He denied too that he so managed his affairs so as to lead his wife to believe that the house at Mercer's Creek was for the benefit of the two of them.

[26] Dr Edwards' evidence was essentially that he formed an intimate relationship with Mrs Edwards around 1987/1988; a child was born to them in 1988; they moved into his house at Hodges Bay in 1989; they got married in 1990 and continued to reside in his Hodges Bay house; two other children were born to them in the course of their marriage; the Hodges Bay house was twice damaged by hurricanes, once in 1995 and once in 1998; the house was repaired on both occasions with the proceeds of the insurance on the house and/or with funds provided directly by him; after the hurricane damage in 1998, he decided to build a new house on a portion of land which he owned at Mercer's Creek in order to provide safer and more comfortable accommodation for his family, particularly his children; construction of the house at Mercer's Creek commenced around December 2001 and they moved into the house in December 2002; the construction of the house at Mercer's Creek was financed by a mortgage loan of \$941,000 which he took from ACB Mortgage & Trust Company and with cash amounts put in by him; the mortgage loan was taken by him alone, secured on his sole property and on a life insurance policy on his life only, and the loan is being repaid by him only by monthly instalments of \$9,723.72; the house is insured in his name only and he alone pays the monthly premium of \$1,576.32. He conceded that his wife bought a Jacuzzi and some new furniture for the house at Mercer's Creek, but he asserted that there was adequate furniture at Hodges Bay to furnish the house at Mercer's Creek and that his wife decided that she wanted to replace some items, which he allowed her to do; she purchased these new items mostly from overseas with her own funds, but they were shipped to Antigua at his costs, in terms of payment of freight and customs duty; he paid for the provision of cupboards, bathroom fixtures, walkways, fences, walls and other appurtenances to or amenities of the house, even though his wife may have been the one dealing directly with the service provider; he had occasion once to request his wife to assist him by making a payment of \$10,000 to the person who was

constructing the kitchen and bathroom units for the house at Mercer's Creek, but he subsequently reimbursed her for the payment made by her; he gave his wife money for groceries and other household expenses, but he has no available documentation to verify this fact or the amounts given.

[27] Having reviewed the pertinent facts of this case, it is now necessary to address the applicable law.

[28] I had occasion just recently in the case of **Cameron v Cameron**¹ (in a judgment delivered in this court on 20th August 2012) to review the judicial authorities bearing on the issue before the court in the present case and to summarise the legal position (in paragraph 12) as follows:

"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."

At paragraph 17 of the judgment, I also made the following statement:

"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."

And, in paragraph 19, I stated as follows:

"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

¹ ANUHCV 0668 of 2010

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."

[29] On the facts of the present case, there is no cogent evidence (to satisfy the court on a balance of probabilities) that at the time of the acquisition of the property at Mercer's Creek (the legal ownership of which is vested in the Defendant only) the Claimant had contributed to its acquisition in reliance on a common intention or an agreement between her and the Defendant that in so doing she was acquiring a beneficial interest in the property.

[30] The Defendant's undisputed evidence is that in 1986 (which was before the commencement of his relationship with the Claimant) he purchased a portion of land from the Government, but the Government was unable to convey to him the title to the land that he had purchased from them and so he agreed to accept the Mercer's Creek land in substitution. According to the land register forming part of the documents in this case, the Mercer's Creek land was transferred to the Defendant in 1992 (at which time he was married to the Claimant) but the land was registered in his name only. It is also the Defendant's undisputed evidence that he took a mortgage loan of \$941,000 to build the house at Mercer's Creek and the Claimant was not a party to the loan. The land register reveals that the mortgage was registered on 26th June 2001. It is also the undisputed

evidence of the Defendant that apart from the mortgage loan being secured by land owned solely by him, it was also secured by a life insurance policy in his name only, and that the house (when constructed) was insured in his name only. It is also the Defendant's undisputed evidence that the mortgage loan is being repaid by him only by monthly instalments of \$9,723.72, together with the monthly insurance premium of \$1,576.32. It is also the Defendant's undisputed evidence that the remainder of the funds for the actual construction of the house (over and above the proceeds of the mortgage loan) were provided by him only, although the Claimant claimed (and the Defendant disputed) that she paid the cost of constructing fences, walkways, railings, patios, planters and other such amenities for the exterior of the house, as well as kitchen and bathroom units for the interior of the house, and also purchased bathroom fixtures.

[31] The undisputed evidence of the Defendant suffices to establish that he alone financed the purchase of the land at Mercer's Creek and the construction of the house thereon, barring some interior and exterior amenities which the Claimant alleged that she financed. It is also established from the undisputed evidence of the Defendant that the land was purchased by him before the commencement of his relationship with the Claimant, but title to it was not conveyed to him until two years after his marriage to the Claimant. If therefore there was any common intention or agreement that the Claimant was to be a co-owner of the property, then the land could have been conveyed to her and the Defendant jointly at the time of the conveyance in 1992. Moreover, if there was a common intention or an agreement that the house to be constructed on the land was to be the joint property of the Claimant and the Defendant, then the mortgage loan could have been taken in their joint names, even if the loan was to be repaid mainly or only by the Defendant. Again, a common intention or an agreement as to joint ownership could have been reflected in the

insurance policy on the house, which could have been in the name of both spouses, even though one spouse only was the registered owner of the property.

[32] The fact is that there is nothing - apart from the say-so of the Claimant (which is flatly denied by the Defendant) - to suggest even that there was any common intention or agreement between the parties that the house and/or the land at Mercer's Creek was to be the joint property of the Claimant and the Defendant.

[33] Even if there had been an agreement between the Claimant and the Defendant (as alleged by the Claimant) that the Claimant would meet the household expenses of the family and the Defendant would meet the mortgage and utility payments for the house, this would not have been sufficient to create a trust entitling the Claimant to a share in the beneficial ownership of the house and land, but I do not in any event believe the Claimant's evidence on this, having regard not only to the Defendant's denial of it in his evidence, but also to the inconsistencies in and the implausibility of the Claimant's evidence on this.

[34] The inconsistencies include the following –

1. The Claimant alleged that she and her husband agreed that she would take care of the household expenses, including the purchase of groceries and the payment of the gardener and the household helper, while he would make the mortgage payments on the house, yet she averred in her affidavit that "although the Defendant lives in the house and partakes of any food stock, he did not provide a dollar towards its acquisition until the year 2009 when I wrote to him complaining about my inability to take care of paying for the groceries and the gardener all by myself."

2. The Claimant alleged that she did not complain or demand the return of the money deducted from her fixed deposit account at Bank of Antigua because of her husband's non-payment of his loan with the bank, yet there is before the Court a letter dated 21st October 2005 which she wrote to him demanding repayment of the money (with interest) by 15th December 2005 and indicating that a copy of the letter will be sent to her lawyer.
3. The Claimant alleged that it was decided that her husband would sell the house at Hodges Bay and use the net proceeds of sale to put towards a mortgage for the new house at Mercer's Creek, yet the house at Hodges Bay was not sold until three years after the mortgage had been taken for the house at Mercer's Creek and two years after the house was completed.
4. The Claimant alleged that it was agreed between her and her husband that the house at Mercer's Creek would be their joint property as husband and wife, yet she conceded that by June 2001, before construction of the house had commenced, the marital relationship between them had broken down

[35] The implausibility arises from the following –

1. It is difficult to conceive of the Claimant being able to finance the construction of the kitchen and bathroom units, the purchasing of the bathroom fixtures, the construction of exterior walls, fences, walkways, patios, planters and several other amenities to the house, while also buying new furniture and appliances for what appears from both the evidence and the exhibits to be an expensive and expansive house, purchasing all of her and the children's clothes and other necessities, purchasing groceries and other household supplies for the family, paying the wages of a gardener and a household helper, purchasing a vehicle or vehicles, and maintaining fixed deposit accounts, all on an income of between \$3,200 and \$3,700 per month.

2. It is not credible that the Defendant would write to the Claimant in the terms that he did in his letter to her of 14th June 2001 pronouncing the end of their relationship, stating his belief in her being unfaithful to him and announcing his own involvement in a relationship with someone else, and thereafter take a mortgage loan of nearly one million dollars and put in a further \$200,000 to construct a dwelling house to be the joint property of the Claimant and him on two acres of land owned by him.

[36] I prefer the consistent and plausible evidence of the Defendant that he in fact financed most of the family's household expenses, in addition to all of the costs involved in the acquisition of the Mercer's Creek land and the construction of the house on it. I also prefer the evidence of the Defendant that it was he who financed the construction of the kitchen and bathroom units and other fixtures inside the house and the fences, walkways, patios, planters and other amenities outside the house.

[37] On the evidence given in this case and on the law applicable to this case, I find that the two acres of land at Mercer's Creek registered in the name of the Defendant, and the dwelling house erected on the land, are the sole property of the Defendant.

[38] The Defendant conceded that the Claimant did purchase several items of furniture and appliances and decorations for the house, that she did purchase the Jacuzzi and miscellaneous other things for the house, but that this did not entitle her to a share in the house and land. The Claimant must, however, be compensated for the appreciation in the value of the property resulting from her contributions to its amenities. This however ought to be the subject of agreement between the

Claimant and the Defendant as to quantum, and need only be determined by the court if the parties have tried and failed to resolve it by their own efforts.

[39] In terms of costs, I find that it was appropriate (or at least not inappropriate) for the Claimant to make a case (as it were) for a share in the house which she has shared with the Defendant as a home for the last decade as husband and wife, though clearly throughout most if not all of that time (between 2002 and 2012) in an apparently broken marriage. Although the evidence did not support her claim, I do not believe that she should be penalized in costs for the pursuit of the claim. I will accordingly make no order as to costs.

[40] The Claimant's case is dismissed, with no order as to costs.

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

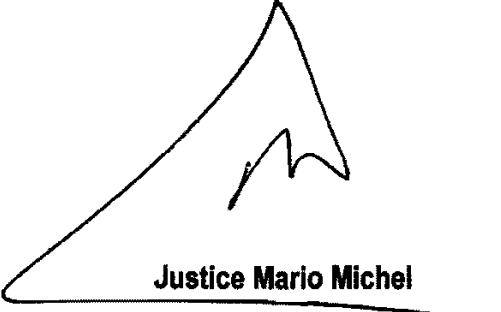
By Counsel for the Claimant –

1. *Stack v Dowden* [2007] UK HL 17
2. *Abbott v Abbott* [2007] UK PC 53
3. *Jones v Kernott* [2011] 2 W.L.R. 1121
4. *Oxley v Hiscock* [2004] 3 A.E.R. 703
5. *Romig Michael v Heather Michael* - ECSC Civil Appeal No 15 of 2008

By Counsel for the Defendant -

1. *Abbott v Abbott* [2007] UK PC 53
2. *Pettitt v Pettitt* [1969] 2 ALL ER 385

3. Cupid v Thomas (1985) 36 WIR 182.



Justice Mario Michel