SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2008/0277

BETWEEN:

JANE KANGAL

Claimant

and

PAUL CADETTE

Defendant

Appearances:
Eghan Modeste for the Claimant
Dexter Theodore Q.C. for the Defendant

2017 : January 24;
2017 : February 17.

JUDGMENT

[1] **SMITH J**: The contour of this case is the familiar one of a dispute between an unmarried couple as to the beneficial ownership of a house in which they formerly lived together as man and wife. The Claimant, Jane Kangal, asserts that she is entitled to a one-half share in the concrete dwelling house of the Defendant, Paul Cadette, erected on Parcel 1049B 530 at Carellie in Castries. The two had met in or around February of 1995 and commenced cohabitation in a common law union shortly thereafter. The construction of the dwelling house in dispute, which I shall hereafter refer to as "the house", commenced sometime in 1997 but was not sufficiently complete and fit for habitation until 2001 when the Claimant and the Defendant moved in together. Their relationship began foundering sometime around 2005 or 2006 when the Claimant discovered that the Defendant, whilst

still living with her, had fathered a child, Nazi, with another woman. This eventually led to their ceasing cohabitation and separation in April of 2007.

[2] The Claimant seeks the following relief from the Court: a Declaration that she and the Defendant are the joint owners of the house; an order for the sale of the house and the equal division of the proceeds of the sale; or, alternatively, an order for the valuation of the house and the payment to the herself of half of that value; and, lastly, damages for use and occupation from 16th July 2007 to the date of the judgment.

[3] The defence of Paul Cadette is that he purchased the land upon which the house was built exclusively with his own funds; he had house plans drawn up with his own funds, without any input from the Claimant; and, he had the house built through his sole efforts and with his own funds. The Claimant, he says, never paid for any materials or paid any of the workers involved in the construction of the house. This is hotly contested by the Claimant whose case is that she in fact contributed substantially to the building of the house. The facts will be returned to and examined in depth later in the judgment.

[4] It was agreed between Counsel for the parties that the sole issue for the determination of the Court is whether the Claimant is entitled to a share of the dwelling house. It is not in dispute between the parties that the property on which the house was built was purchased by the Defendant in his sole name. Neither is it in dispute that there is no express declaration of a trust in favour of the Claimant nor any written agreement that the house was to be shared beneficially by them. For the Claimant to be successful she must therefore establish that there was a common intention between herself and the Defendant, relied and acted upon by her, that she should have a beneficial interest in the house. If she can do that, equity will not allow the defendant to deny that interest and will construct a trust to give effect to it.

[5] The pathway to determining whether the facts of this case support the Court constructing a trust in favour of the Claimant has been fully illuminated by the oft-cited authorities **Pettitt v Pettitt [1969] 2 All ER 385, Gissing v Gissing [1971] A.C. 886, Grant v Edwards** and

another [1986] 2 All ER 426 and, more recently, **Stack v Dowden [2007] 2 All ER 929**. These cases set out the applicable principles and considerations to which this Court should address its mind in determining whether the Claimant has a beneficial interest in the house. But it is Vice-Chancellor Sir Nicolas Browne-Wilkinson's clinical vivisection in **Grant v Edwards** of Lord Diplock's speech in **Gissing and Gissing** that I find particularly helpful. This is set out below:

> "For present purposes, his speech can be treated as falling into three sections: the first deals with the nature of the substantive right; the second with the proof of the existence of that right; the third with the quantification of that right.
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> 1. The nature of the substantive right: (page 905B-G). If the legal estate in the joint home is vested in only one of the parties ("the legal owner") the other party ("the claimant"), in order to establish a beneficial interest, has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated: (a) That there was a common intention that both should have a beneficial interest; AND (b) That the claimant has acted to his or her detriment on the basis of that common intention.
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> 2. The proof of the common intention:
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> (a) Direct evidence (905H):
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> It is clear that mere agreement between the parties that both are to have beneficial interests is sufficient to prove the necessary common intention. Other passages in the speech point to the admissibility and relevance of other possible forms of direct evidence of such intention: see at page 907C and page 908C;
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> (b) Inferred common intention (906A-908D):
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> Lord Diplock points out that, even where parties have not used express words to communicate their intention (and therefore there is no direct evidence), the court can infer from their actions an intention that they shall both have an interest in the house. This part of his speech concentrates on the types of evidence from which the courts are most often asked to infer such intention viz. contributions (direct and indirect) to the deposit, the mortgage installments or general housekeeping expenses. In this section of the speech, he analyzes what types of expenditure are capable of constituting evidence of such common intention: he does not say that if the intention is proved in some other ways such intentions are essential to establish the trust.

3. The quantification of the right (908D-909):
Once it has been established that the parties had a common intention that both should have a beneficial interest and that the claimant has acted to his detriment, the question may still remain "what is the extent of the claimant's beneficial interest?" This last section of Lord Diplock's speech shows that here again the direct and indirect contributions made by the parties to the cost of acquisition may be crucially important."

[6] I will now return to and survey the facts, carefully examining them against the backdrop of the applicable principles.

[7] At that time the parties met in February 1995, the Defendant was employed as an electrician with the Water and Sewerage Company (WASCO), had recently been ejected from his estranged wife's house and lived at his mother's house at Barnard Hill in Castries. The Claimant, who was employed by Cable & Wireless, lived in Vieux Fort. Shortly after they met, the claimant moved in with the Defendant at Barnard Hill. According to him, the reason for her moving in with himself and his mother was to save her the cost and hassle of having to travel each day from Vieux Fort through Castries to the Cable & Wireless office in Corinth where she worked. According to her, she moved in at his request to assist him with his young daughter Christal, following the breakup between the Defendant and his wife. Eventually, the Claimant's son, Jason, also spent weekdays or a portion of weekdays with them at Barnard Hill and would go down to Vieux Fort with his mother on weekends or sometimes on his own ahead of her.

[8] The Defendant completed the purchase of the land on which the house is situate in 1996 with a loan of $32,000.00 from the Bank of Nova Scotia which he repaid from his monthly salary. According to him, he had been negotiating for its purchase before he met the Claimant. She did not deny this. The Claimant also completed purchase of her own lot in or around 1996 at Grand Riviere in Gros Islet with a loan from a credit union. Construction on the Defendant's house commenced in 1997. The Defendant insisted that the Claimant commenced construction on her own house while his house was being built. The Claimant denied this and maintained that she did not commence construction on her house until 2008, after they had separated. Their respective positions did not change under cross-

examination as to when the Claimant's house was built. She admitted however that her house was complete with windows and curtains, but no one lived in it.

[9] The Claimant does not dispute that the Defendant paid for the land and the house plans with his own funds, without any input from her. Where issue is joined is on the question of whose money paid for the materials and labour for the construction of the house. The Defendant's narrative is that because of his bitter experience of having been thrown out of his wife's house at Ciceron when their marriage soured, he was determined not to let that happen to him again. For that reason, he says he never had any discussion with the Claimant about their building the house together or her contributing to it. He wanted it to be for himself and his children. The Claimant insists that she and the Defendant sometime in 1997 agreed to build the house as a home for the two of them.

[10] In a quite detailed witness statement which stood as his evidence in chief, the Defendant set out how the house was built. He used what he described as a barter system. It appears that over the years he had done electrical work for a number of people from whom he had not received payment. He therefore called in his "debts" from those people, accepting payment in cement blocks or other materials he needed for the house. He also used another system called "coud main". This is a vernacular term that describes a situation where persons provide labour in exchange for food and drink *in lieu* of monetary payment. The Claimant did not deny that the barter system and "coud main" were used in the construction of the house. Her contention was that where materials were in fact bought she made a direct financial contribution to such purchases and sometimes paid for labour as well.

[11] Was there a common intention that both parties should have a beneficial interest in the house? The Claimant says there is direct evidence of this, namely, that in 1997 the Defendant and herself agreed that they should build a house for themselves on the Defendant's land in Carellie. This is how she put it in her witness statement which stood as her evidence in chief:

> In 1997 Paul and I agreed to build a dwelling house on the land which he purchased and to use the house as a dwelling home for ourselves. In that same year we commenced construction of the dwelling house.

[12] But as she admitted to Mr. Theodore under cross-examination, and as is evident from the Court's perusal of the evidence, other than that bare assertion in her witness statement, no other details of the agreement whatsoever is provided elsewhere in her witness statement or in her oral evidence. Indeed, one would have thought that, given the obvious centrality of this alleged agreement to the success of the Claimant's case, some kind of context, background or detail of the alleged conversation, no matter how mundane, might have been provided to lend weight and credibility to the statement. But there was no elaboration whatsoever, leaving it to stand as a naked assertion uncorroborated by nary the tiniest of detail. The defendant, unsurprisingly, passionately denied any such agreement. When weighed against his explanation as to why he was building this house for himself and his children, the Court cannot reasonably find, on a balance of probabilities, that there was any credible, direct evidence of an agreement.

[13] That, however, is not an end of the matter. The fundamental and most difficult question is still left to be resolved. That is whether the Court can infer from their actions an intention that they should both have an interest in the house. I must therefore sift through the facts, with granular particularity, to see whether from their conduct the requisite intention can be discovered. What sort of conduct is required? In **Grant v Edwards**, Nourse J put it this way:

> "In my judgment it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house. If she was not to have such an interest, she could reasonably be expected to go and live with her lover, but not, for example, to wield a 14 lb. sledgehammer in the front garden. In adopting the latter kind of conduct she is seen to act to her detriment on the faith of the common intention."

[14] Lord Diplock, in **Gissing v Gissing**, put it less colourfully. Evidence of that common intention might be inferred from contributions (direct or indirect) to the deposit, the mortgage installments or general housekeeping expenses which were referable to the construction of the house.

[15] As already rehearsed, the land was purchased by the defendant with his own funds and transferred into his own name. No mortgage was ever taken for the construction of the house so that the question of contribution to mortgage payments does not arise. So what was the conduct of the Claimant which she could not reasonably have been expected to embark upon unless she was to have an interest in the house?

[16] Counsel for the Claimant, Mr. Modeste, placed great reliance on seventeen pages of a notebook kept by the Claimant, a copy of which was in evidence before the Court. This notebook contained hand-written entries of materials purchased for or labour expended on the construction of the house. Next to each item purchased was entered the date of purchase, the cost and the quantity. If it was labour, the name of the worker was entered next to the date, what it cost and the item of work done. According to Mr. Modeste, this notebook was a record and accounting of the Claimant's direct financial contribution to materials and labour for the construction of the house. He submitted that the Claimant would never have done this kind of book keeping exercise had it not been in furtherance of her one-half interest in the house. In cross-examination by counsel for the Defendant, Mr. Theodore, the Claimant stated that the Defendant would hand her receipts from time to time and she would make the entries in the notebook. She would store the receipts in a box.

[17] I am not convinced, on a balance of probabilities, that the claimant making notes in the notebook when handed receipts by the defendant was a way of accounting for her contributions to construction. It seems unrealistic to conclude that at that point, even before their relationship began falling apart, they would keep an accounting of the Claimant's contributions, especially since, on the Claimant's case, there was an agreement that they were building the house for them both. If there were no domestic difficulties yet rippling on the horizon, why would the parties be engaged in recording the claimant's contribution to construction costs? I find it more plausible that the Claimant was simply assisting the defendant with keeping a record of his construction expenses. I accept, as submitted by Mr. Theodore, that she did so to be helpful or because she loved the

Defendant as she admitted in cross-examination. I do not accept that, in the context of a six-year common law union in this jurisdiction, the Claimant could not reasonably have been expected to undertake the task of making entries in the notebook to assist her lover unless she was to have an interest in the house.

[18] The Claimant also relied on a sheaf of some forty-four of her returned cheques dating from 1999 to 2005 that formed a part of her evidence. About ten of the cheques were made out to the Defendant. The others were made out to Courts St. Lucia, Winmark Ltd, M&C Home Depot, Johnsons Hardware, Brice & Company and other suppliers in St. Lucia. This, she says, reflected her expenditure on construction and furnishings for the house without which the defendant would not have been able to complete the house on his own. Particular emphasis was placed on the cheque to Brice & Co. as evidence of a direct financial contribution by the Claimant to the roof of the house. Her testimony was that her monthly salary from Cable & Wireless was higher than his salary from WASCO (she earning $3,800.00 per month, compared to his $2,083.96 per month) and that she was not indebted to financial institutions as he was, so that she often had more cash available than he did and that was how she came to make these contributions to the construction of the house.

[19] In cross-examination, the Defendant agreed that she might have indeed had more cash available than he did but that was because he paid for everything. His evidence was that his monthly salary from WASCO was in fact $3,324.00 per month but this was supplemented by electrical jobs he did privately which earned him as much if not more than his full-time job. In relation to the cheques made out to him personally from the Claimant, the Defendant's case is that when he was short of funds he would borrow money from the Claimant. He said he would not tell her what specifically the money would be used for but was sure she knew it was for construction. These loans he said amounted to some $14,000.00. When he did private work he would pay her back. He put in evidence three cheques, two for $1,000.00 each and another for $2,000.00 which he said were instances of repayment to the Claimant. He offered no proof of repayment other than those three cheques.

[20] The Claimant rebutted this. She said that those three cheques were made out to her to cash for the Defendant for his own use when he travelled. She would cash the cheques and give the money to him. The only loans made to the Defendant were for his motor vehicle insurance, she said. All others sums advanced by her to him reflected her contribution to the construction costs. In relation to the Claimant's cheques made out to the various hardware stores and suppliers, especially the cheque made out to Brice & Co, the Defendant denied that these were for materials or furnishings for his house and said they might have been for the Claimant's own house which he insisted was being built contemporaneously with his. Mr. Theodore submitted that it was equally possible that the cheque made out to Brice & Co. was to purchase a roof for the Claimant's home at Grand Riviere. In his written submissions, he drew attention to the fact that the Claimant did not produce a receipt to prove when she purchased the roof for her Grand Riviere house.

[21] The Defendant also put in evidence a mass of receipts for materials purchased from various suppliers for his house, work contracts with various entities, invoices, building plans and a host of other documents relating to the construction of the house. Included among these was a letter from the manager of the Postlewaithe Housing Project stating that all concrete blocks for the Defendant's house was being supplied and transported at no cost to the Defendant. From the Defendant's evidence, the Court is left in no doubt that he was in charge of the construction of the house, was the driving force behind it, paid for the outfitting of it and utilized the barter system and "coud main" to complete its construction. All this taken in the round, however, does not mean that the Claimant did not make a contribution.

[22] The Claimant's narrative, in sum, is that she advanced monies to the Defendant for materials and labour, entered her contribution in the notebook and that her receipts from the various suppliers evidenced her contribution. The defendant admits to receiving money from the Claimant from time to time but says these were loans which he repaid. Cross-examination of the parties did not change their positions. I therefore find myself unable to reconcile the evidential conflict as to whether the sums advanced by the Claimant were

loans which were repaid or contributions to construction costs. I am equally challenged as to whether the Claimant's receipts from the various suppliers were for materials supplied to her house or to the Defendant's house.

[23] The existence of the Claimant's house at Grand Riviere leaves me in serious doubt as to whether the receipts she exhibited were for materials supplied to her own house or the Defendant's house at Carellie. It is regrettable that the Claimant – to whom it fell to satisfy the Court that a common intention could be inferred from their whole course of dealing – did not put a more fulsome witness statement before the Court. Her statement was a mere three pages compared to the Defendant's which ran to eighteen pages. With a little more detail concerning her house at Grand Riviere, doubt that has arisen in the mind of the Court could have perhaps been dispelled.

[24] I now examine that aspect of the parties' course of dealing as it related to how they discharged the outgoings and general household expenses. The Claimant asserted that, in relation to Christal, she "*purchased most of the items that she required and took on the role of a mother in her life…*", purchased furniture for the house and contributed equally with the Defendant to household expenses. The Claimant made no mention of paying or contributing to the payment of utility bills and admitted under cross-examination that the Defendant paid for them. The Defendant said it was true that the Claimant sometimes bought things for Christal but he insisted that he bought all of Christal's groceries and books. His testimony was that while he and the Claimant lived together he used to leave money in a jacket pocket inside a closet which only he and the Claimant knew about and from which they both drew to meet household expenses as they arose. He admitted that the Claimant bought furniture for the house but stated that she took all of these when she moved out in 2007. The parties' respective version of events did not change during cross-examination.

[25] I am again constrained to observe that the Claimant's witness statement tended to be sparse compared to the Defendant's which was clearly more dense with detail and explanations, lending more credibility to his assertions which were not altered in any

material way under cross-examination. My attention is particularly drawn to an email in evidence sent by the Defendant to the Claimant on 9th May 2007, after relations had soured, in which he said: "*I think it is time that I know which of the bill you will be paying i cannot be paying all bills any more i need a reply befor Friday, i think that you should be paying 50% of all bills*…." Mr. Modeste did not seek to impugn the email by suggesting that the Claimant was already paying her fair shares of the bills. Rather, he submitted that by requesting the Claimant to pay 50% of the bills, this further demonstrated the Defendant's clear understanding that the Claimant had a half share in the house when the relationship broke down. I am therefore unable to conclude that a reasonable man would make the inference that, to the extent that the Claimant actually – on the evidence – contributed to general household expenses and outgoings, she would not have done so had she not thought she stood to enjoy a beneficial share in the house.

[26] In 2005, when relations started curdling, the Defendant partitioned the house using plywood. As a result of the partition, the Claimant enjoyed a larger portion of the house than the Defendant, namely, the master bedroom, the kitchen, the dining room and the study. The Defendant kept the living room, a bathroom and two bedrooms. Mr. Modeste laid great store by this act of partitioning. He submitted that if the Defendant never intended for the Claimant to have a share in the house and always intended the house to be for himself and his children, he would never have voluntarily partitioned it leaving the larger section to the Claimant. This partitioning was therefore clear conduct which demonstrated that the Defendant knew that the Claimant was entitled to one-half beneficial interest in the house.

[27] Was the act of partitioning conduct from which a common intention can be inferred? The Defendant, over the course of some fifty paragraphs in his witness statement, laid out a detailed narrative as to why he partitioned the house. In fine, several different events over time caused him to fear that the Claimant intended him bodily harm. He and his daughter Christal started feeling unwell and suspected that the Claimant was putting something in their food. According to the Defendant, Christal made a complaint to the Ministry of Social Services. The Defendant's vehicle, which he said was only two years old, also started

malfunctioning on a number of occasions and he suspected the Claimant, who had a spare key, to be tampering with the vehicle. After the vehicle developed problems for the third time causing the whole fuel system to be replaced, the Defendant made a claim on his insurance company and they in turn referred the matter to the police. At that point the Defendant said he withdrew his spare keys without any protest from her.

[28] Mr. Modeste submitted, with brio, that "*the Defendant is asking the Court to believe that he used his own funds to construct a house and after someone who lived in the house and had no interest in the house tried to kill him, he partitioned the house so that the purported attempted murderer had greater use of the house than he did*." Mr. Modeste found the Defendant's explanation "irrational" and "unbelievable". The Claimant's witness statement offered no counterpoint to the Defendant's narrative. Without coming to any conclusion as to whether there was any basis, in reality, for the Defendant to believe that the Claimant posed a threat to his life, I find it plausible that he genuinely held that perception and that was what actuated him to partition the house to immediately give himself peace of mind. I do not find myself drawn to the ineluctable conclusion contended for by Mr. Modeste that partitioning the house with plywood was the ultimate act of conceding that the Claimant had a one-half beneficial interest.

[29] Having adopted a holistic approach by carefully retracing the whole course of dealing between the parties that was in evidence and having taken account of all conduct that might have revealed what the intention was, I am unable to conclude that a reasonable man would draw the necessary inference that there was a common intention that the house should be beneficially owned by the Claimant and the Defendant. As open as I might be to finding an inferred common intention, the Court cannot impute to the parties a common intention which they did not have by forming its own opinion as to what reasonable persons in the position of the parties would have intended. Lady Hale who delivered the lead judgment in **Stack v Dowden** sounded the cautionary note that the "*court must never abandon that search in favour of the result which the court considers fair*."

[30] Even if a common intention is established, it is settled law that a Claimant cannot succeed unless she establishes that she has acted to her detriment on the basis of that common intention. If, on a balance of probabilities, the weight of the evidence had tipped in favour of finding that the claimant had indeed made contributions to the construction of the house, it would have been easier to conclude that she had done so in reliance on the common intention and to her detriment. Similarly, I am unable to accept that the Claimant would not have cared for Christal as her own daughter if she did not believe there was a common intention that she should have a beneficial interest in the house. The Claimant's own son, Jason, had also lived with the couple at Barnard Hill and presumably was looked after by the parties. Given the challenge of reconciling the conflicting versions of events, I have also assessed and taken the demeanor of the parties as witnesses into consideration. The Claimant described herself as a quiet kind of person who didn't say much and the Defendant as the more jovial sort. Taking all this into consideration, I found the Defendant to be more forthright and forthcoming than the Claimant upon whom the burden fell of making out her case, and therefore I am more inclined to believe the Defendant.

[31] The picture presented by the evidence is one of an unmarried cohabiting couple having their own separate jobs; retaining their own separate earnings; sharing no joint accounts; purchasing with separate loans their separate properties in their respective names; servicing their loan payments separately; bearing no children together and each eventually ending up with his/her own separate house. The fact that the couple shared household expenses and the Claimant bought furniture and appliances and looked after Christal is not, in my view, sufficient to infer a common intention against the weight of the overall evidential picture.

[32] The claim is therefore dismissed with costs to the Defendant pursuant to Part 65 of the CPR 2000.

JUSTICE GODFREY SMITH, SC
HIGH COURT JUDGE