

ANTIGUA AND BARBUDA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
- (CIVIL)

CLAIM NO ANUHCV2013/0005

BETWEEN:

ALOMA SALOME JOSEPH

Claimant

AND

CHARLES ALEXANDER SIMON

Defendant

Appearances:

Mr. Cosbert Cumberbatch for the Claimant

Ms Kathleen Bennett for the Defendant

2016: February 8; March 7

2017: March 7

JUDGMENT

Introductory

[1] **LANNS; J. [AG]:** In this case, the Claimant, Aloma Salome Joseph ('Ms Joseph' or 'the Claimant') who has never been married, seeks various declarations and orders, against the Defendant, Charles, Alexander Joseph (Mr Joseph or the Claimant) who is legally married including;

- (1) A declaration that she is beneficially entitled to a half share in three parcels of land and a fishing vessel belonging to the Defendant;
- (2) An order that the Defendant do account to the Claimant for (a) the income from the operations of the fishing vessel; (b) the income from the said fishing vessel collected over the period 1981 to date of judgment; and (c) the income from rental of four wooden dwelling house standing on lands situate at Tindale Road, St John's Antigua.;

(3) An injunction restraining the Defendant whether by himself, his servants or agents or otherwise from in any way disposing of his interest in any or all of the properties specified

[2] The Claimant made the usual prayer for costs, interest and such other relief as the court may deem fit.

The Claimant's case

[3] The Claimant's case (as set out in the Statement of Claim) is that she and the Defendant, lived together and shared an intimate relationship in the same household for more than thirty-six years at Tindale Road. During this time, two children were born to the Claimant and the Defendant, namely Damian Simon, born on the 4th June 1978, and Terry-Ann Simon, born on 16th May 1981.

[4] During the period 1988, to present, the Claimant operated a grocery shop at Tindale Road, threw boxmonies, and the money she received from throwing the box contributed to the acquisition of three parcels of land (Parcel 9, Kentish Road and Ottos; Parcel 67 situate at Golden Grove, and a parcel of land¹ situate at Bendals.

[5] During the time the Claimant and the Defendant lived together, and during the time the Claimant operated the grocery shop and threw box hand, the Claimant pooled her resources with those of the Defendant, and the Defendant built a fishing vessel and did fishing on a commercial basis, and acquired significant sums of money. During this time, and while the Defendant was at sea, the Claimant raised the children, remained a dutiful mate and performed domestic and household chores.

[6] The Claimant and the Defendant first lived in a wooden house, but over a period of time, it was converted in a one-storey structure and now has a value of \$500,000.00. Construction of the new structure began in 1990, and during the course of construction, the Claimant performed numerous tasks including labour work on the site, collecting sand and carrying blocks, mixing cement, while at the same time operating the grocery shop

[7] The Claimant also assisted the Defendant in the fishing business by selling fish.

¹ Parcel No. and Block No said to be unknown known

- [8] While the Defendant and the Claimant lived together, the Defendant built four wooden houses at Tindale Road which altogether worth \$240,000.00, and the lands on which the houses stand are valued at \$42,000.00. Two of the houses are rented for \$800.00 per month each; and the other two for \$400.00 per month each. The Claimant used to collect the rent, and she handed it over to the Defendant.
- [9] The relationship between the Claimant and the Defendant has broken down and the Claimant believes that the Defendant is making plans to dispose of the lands and other assets to defeat her claim.

The Defendant's case

- [10] The Defendant case consists of admissions, denials, and 'makes no admission':
- (a) Admits that the Defendant and the Claimant lived together and shared an intimate relationship, but denies that it was for thirty-six years. States that they lived in the same household for 25 years;
 - (b) Denies that the Claimant contributed time, labour, and money towards the management, running and upkeep of the household.
 - (c) Admits that the Claimant and the Defendant had two children together in 1978 and 1981.
 - (d) States that with respect to paragraph 4 of the Statement of Claim, that he built the grocery shop at Tindale Road before the parties started living together, and at present the Claimant operates a grocery shop from rented premises across the street from where they live. The Defendant allowed the Claimant to operate the shop at Tindale, so as to provide her with an income. States that he also gave the Claimant a weekly stipend to supplement her income from the shop.
 - (e) Makes no admission as to the Claimant's assertion of throwing box money. and puts the Claimant to strict proof.
 - (D) Denies that any lump sum the Claimant received from throwing the box monies ever contributed to the acquisition of the properties listed; Asserts that the properties listed were acquired by him prior to him meeting the Claimant, and that at no time did the Claimant contribute in any way to the acquisition of the said properties; nor did he at any time receive any monies from the Claimant. States further that he no longer owns the property at Bendals, as it was sold almost six years ago.

- (g) Denied that he ever pooled resources with the Claimant. States that save for the money the Defendant gave the Claimant to run the household, both parties kept their own monies.
- (h) Denies that he ever owned a 100ft fishing vessel. Further denies that the Claimant contributed to the acquisition or maintenance of any fishing vessel the Defendant owned.
- (i) Denies that the Claimant assisted him in his fishing business. States that one, Ms Philamine, Alexander, deceased, had been selling for the Defendant for over 25 years now. States further that the Claimant is not entitled to any accounting or any portion of his income the Defendant has earned from fishing.
- u) States that with respect to paragraph 6 of the Statement of Claim, the parties lived in a four bedroom wooden house just above the shop which he had built. About two and a half years ago, the shop was converted into an upstairs making it a six bedroom house.
- (k) Denies that the Claimant assisted with the construction of the house. Avers that he hired a contractor to build the house. States that he makes no admission as to the value of the house.
- (l) States that with regard to the 4 wooden houses, three of them were purchased by the Defendant in the 1960's when he bought the land on which they now stand. Further states that the Claimant met the Defendant with those 4 houses, and she has no interest in them
- (m) Admits that the Claimant collected rent, but only when the Defendant was at sea. On all other occasions, the Defendant collected the rent. States that the Claimant has no interest in rental monies, and she is not entitled to any accounting in respect of the said monies
- (n) Admits that he owns Parcel 255 but states that his wife lives on the said Parcel, and the Claimant has no interest therein. States further that the Defendant does not own any house at Fort Road .
- (o) Denies that he has any plans to dispose of his land and assets.
- (p) States that the Claimant at no time made any contribution towards any of the Defendant's properties and assets and the Claimant has no interest in them.

The Reply

- [11] The Claimant replied, maintaining all the averments put forward in her Statement of Claim, and clarifying/defining the issues raised between the parties.

The evidence

- [12] The evidence for the Claimant was given by the Claimant, and Damian Simon and Wayne Martin, while the evidence for the Defendant was given by the Defendant, and Archibald Myers. I would wish to state at this juncture that having seen and heard the evidence of the witnesses, although they all gave their evidence in a forthright manner, with some contradiction and inconsistencies here and there, I was unimpressed with the manner in which the Defendant gave his evidence. He was cagy, hesitant, hostile and combative. Even though he was cautioned/and admonished by the court about his behaviour, he was at times disrespectful to the court, answering questions with questions of his own to the extent that the court had to rise to allow counsel to speak to him. However, the court is able to decide the matter based on the evidence/material before it.

Aloma Joseph's Evidence

- [13] Ms Joseph in her witness statement stuck to the averments in her statements of case, and expanded it, adding that it was she who, in 1990, when construction of the house on Parcel 9 began, engaged the backhoe to dig the foundation for the new house to replace the old one that was there. She approached one, Mr Roacher² to draw the Plan; She went to Antigua Masonry Products to purchase concrete blocks, and other building materials³. She got materials shipped from Toy Contractors Limited in Puerto and St Martin. She engaged one, Mr Samuel Simpson to do the-plumbingwork on both floors of the new house. She oversaw and supervised the construction of the house while Mr Simon was at sea; she cooked meals for the workmen. In March 2014, a valuation report was done by Mr Wayne Martin who ascribed a value of \$367,000 to the house, which is described in the land Register as Registration Section Kentish and Ottos, Block 1691C, Parcel 9. According to the Claimant, Parcel 9 was acquired in 1980, during the time she lived with the Defendant and after the birth of their son Damian.

² Mr Roacher gave a witness statement but he did not attend court.

³ Such as awning windows, Bi-folding doors; Miami windows; panel doors; bathroom locks.

[14] The Claimant avers that she is aware that since the Claim was filed, the Defendant sold (Parcel 67) the Golden Grove Property to one, Mr. Isaiah Knight. It was transferred to Mr Knight six months after she filed her claim, in which she claimed a halfshare beneficial interest. The Claimant is of the view that the Defendant made these transactions with the intention of depriving her of any interest in Parcels 67

[15] Since the claim was filed, she became aware that Mr Simon, in 1980, acquired a parcel of land described as Kentish and Ottos, Block 691E, Parcel 32. Since the claim was filed, Mr Simon has charged the said land to secure a loan of \$246, 538.76 from Antigua and Barbuda Development Bank. The Claimant believes stated she believes that the Defendant made these transactions with the intention of depriving her of any interest in Parcel 32.

[16] According to the Claimant, the four wooden houses at Kentish Road were in a state of complete disrepair when she met Mr Simon, but over the years, while the Claimant and the Defendant were together, the houses were completely rebuilt through the joint efforts of the Claimant and the Defendant. As at March 2014, the four houses valued \$224,081.00, as per the valuation done by Associated Engineers Partnership.

[17] The Claimant in her witness statement stated that the Defendant still lives with her; that she still cooks and wash for him; that she is aware that his wife lives in Parcel 255, which is owned by him.

[18] She reiterated that she was claiming a 50% beneficial interest in Parcel 9, Parcel 67 and Parcel 32, the fishing vessel and the wooden houses; or the monetary value of the interests he disposed of after she filed her claim.

[19] Under cross examination, the Claimant admitted that the Defendant acquired all Parcels of the subject lands before he met her. As to Parcel 255, the Claimant under cross examination informed that she was not claiming any interest in that Parcel of land. As to Parcel 32, the land on which the four wooden houses stand, the Claimant admitted that it is not pleaded that she is claiming an interest in this parcel. She admitted, under cross examination that she met the Defendant with the land and the four houses which stand thereon. This bit of evidence is inconsistent with her

avertment in paragraph 7 of the Statement of Claim that "while the Defendant and the Claimant lived together the Defendant built four wooden houses at Tindale Road". However, the Claimant maintained that she helped the Defendant to improve the houses so that he could get more money for them..

[20] The Claimant also admitted that the grocery store which she operated was built by Mr Simon, but she explained that it was originally built for her to run a breakfast shop as he did not want her to leave the kids to go out to work. She prepared breakfast in the morning which she sold: bread and cheese, bread and corned beef; bread and sausage; bread and salt fish. Some time after, she turned the breakfast shop into a grocery store and sold sardines rice, sugar, cornmeal; the money to finance that venture came from her selling of things in the breakfast shop. She denied that Mr Simon stocked the shop. When asked under cross examination whether she had evidence to prove her income, the Claimant replied that she did not think it was necessary to do so. She however gave her lawyer two bank statements which showed her income/deposits over the years.

[21] The Claimant told the court that her source of income came from the breakfast shop, the grocery store and throwing boxes. She maintained that she assisted in various ways with the building of the house on Parcel 9 in which she now lives with the Defendant and their son Damian. She also maintained that she raised their children, took care of the household, She insisted that the Defendant told her that the house they were building was a family house.

Damian Simon's evidence

[22] There is no question that Damian presented himself as one whose loyalties lie with his mother, toward whom he is extremely protective.

[23] Damian Simon stuck to the averments in his witness statement and he corroborated aspects of his mother's evidence, such as the house they live in, her involvement in construction of it, her involvement in the renovation/improvement of the 4 wooden houses, and her assistance in the selling of fish throughout the community; and her throwing of box hand.

[24] Under cross examination, Damien maintained that he used to sell fish with his mother, that his mother threw box money; that he used to go to deliver and collect the box money for his mother and sometimes his mother would get \$5000.00 to \$6000.00 because there were several persons involved in throwing box hand; that his mother was actively involved in the construction of the house in which they live. He denied that the house as it stands has any wood in it from the old house. He asserts that it is a brand new house.

Mr Wayne Martin's Evidence

[25] Wayne Martin, a Civil Engineer, and General Real Estate and Real Property Appraiser, gave evidence that on the 17th March 2014, at the request of the Claimant, he carried out an appraisal of two properties (Parcel 9 and Parcel 32). The reports were attached to his short witness statement.

[26] Under cross examination, Mr Martin confirmed that his report shows that the Defendant Charles Alexander Simon is the Registered Proprietor of Parcel 9 on which the parties live. As regards Parcel 32, the Register shows that it is owned by one Charles, Meade Simon⁴. Asked whether he knew anything about the history of the properties, Mr Martin replied that he did not, at which point there were no further questions for this witness.

[27] That was the case for the Claimant

Mr Charles Alexander Simon's evidence

[28] Mr Simon in his witness statement states that he came to know the Claimant in 1971. when she rented a house from him on Tindale Road. In 1975 he began an intimate relationship with her. In 1988 they started living together. He built a little shop in his yard in 1988, and allowed Ms Simon to operate the shop so that she could have an income. He would purchase items for the shop when he travels. He gave Ms Joseph a weekly stipend. to supplement her income from the shop.

⁴1 appears from paragraph 1 of his witness statement that the Defendant is also known as Charles Meade Simon

[29] The Defendant states that he owns several properties, but the properties which the Claimant claims an interest in were either purchased before he met her, or before they were in an intimate relationship. At no time did he receive any money from Ms Joseph to purchase his properties. He no longer own the land at Bendals. (Parcel 67) He sold it six years ago. He still owns parcel 255 at Gray's Farm where his wife lives for many years.. Ms Joseph has no interest in that property. He does not own any land at Fort Road. The four wooden houses were purchased by him before he met Ms Joseph.

[30] Three of the houses together with the land on which they stand were purchased in 1960's. Ms Joseph has no interest in them. He collected his own rent. Ms Joseph only collected rent while he was at sea.. He has never owned a 100ft boat. His first fishing boat, (acquired in 1958 or 1959), was 38 ft long; his second, (acquired in the 1960s) was 88 ft long; the third acquired in the 1980s was 65 to 70 feet long. He paid \$60,000 for the boat with a loan from the Antigua and Barbuda Development Bank. He is still paying the loan today. Ms Joseph never assisted in buying the boat.

[31] When he and Ms Joseph started living together, they lived in a two bedroom wooden house, which he constructed at Tindale Road. He later decided to lift up the wooden house and construct a concrete structure underneath. The new concrete structure later housed a shop which he allowed Ms Joseph to operate. About three years ago, the shop was converted into 2 bedrooms and an extra room was added downstairs, and one upstairs, making the house a six bedroom house. Ms Joseph had purchased about 50 blocks when the house was being lifted, but she never assisted in building the original wooden house, nor in the construction of the concrete structure underneath. He hired a contractor to build the house and he paid him for labour and materials, he said.

[32] Mr Simon contended that when the house was being expanded Ms Joseph never supervised the works. The contractor was paid to do that.

[33] He took out and refinanced loans between 1988 and 2013 to use in his fishing business. Ms Joseph has not cooked for him for several years now. His children from his wife are the ones who have been assisting him.

[34] Under cross examination, the Defendant stated that he never lived with the Claimant until the 1970's; that over the years while living with the Claimant she cooked, washed and cleaned for him; that since he left Grays Farm in the 1970s he never went back to live with his wife; that the Claimant looked after their children; that the Claimant does nothing for him now; she stopped doing anything for him three years ago; that he does things for himself; that the Claimant's first son from a different relationship cooks for him sometimes; that his daughter Joan also cooks for him. He denied that Ms Joseph played an important role in building the house that they live in as it stands. He denied that she contributed or assisted financially or otherwise in building the house. He denied that the Claimant was the driving force behind the building of the house in which they now live, but admitted that she bought some blocks which he used in building the house; and she carried water to the workmen to mix concrete. He denied that the Claimant has any interest in the house, He said that she has her own house in which he contributed because he never took any money from her when she sells fish. He denied having any discussion or agreement with the Claimant about the house being a family house. When it was put to him that at the time house was being built, his intention was to build a family house, the Defendant replied that he does not remember having any agreement with the Claimant about the house being a family house because he knew he had his wife.

[35] The following exchange took place

BY MR CUMBERBATCH

Q: When the house was built did you not say that your intention was to build a house for family, meaning you, Ms Joseph, your daughter and son?

A: Ms Joseph lived in the house for close to six years. I had no discussion with her I do not remember having that kind of agreement with her about house being a family house. I know I had my wife so I can't tell her that.

Put: Ms Joseph was the driving force when that house was being built

A: She bought some blocks. I told her I am going to raise the house and she say she going to buy some blocks. After she bought the blocks I raised the house so we could live upstairs, and the shop downstairs.

Q: There is another parcel of land that has on 4 houses on it. Those houses -- when you first met her they were old broken-down houses

A: Nutthing go so.

Q: Those houses were renovated and rebuilt

A: No. The last one I built it out of plywood.

Q: Those houses are not in the condition as they were when you met Ms Joseph

A: Not correct

Q: Ms Joseph collected rent for those houses

A: Her son does that for me

Q: She got the tenants for the houses ?

A: She may have gotten tenants at one time

Q: She has been your housekeeper, and she has performed roles and duties of a wife

A: Well, sometimes. She does do things for me. We does pull good.

Q: Do you agree that she is entitled to a share of the building you live in now.

A: I don't believe so because since late last year, she had a woman. she took care of and the woman died and left a house for her, and she took the house and built a two storey house as big as the one I have. All those things she got out of me and I am not asking for nothing out of it.

Q: Are you saying that after 40 years she should get nothing

A: She get something; she get the house she build; she get that out of me.

Mr Archibald Myers' evidence

[36] The gist of Mr Myers' evidence is that he has been a boat builder for over 40 years; that he was aware that the Defendant owned three boats. He assisted in building the last two. Throughout the years he did the maintenance work on the boats and was paid by the Defendant.

[37] Under cross examination, he said he could not recall when the second boat was built. In his witness statement he said the second boat was built in the late 1960s.

Issues ..

[38] The issues for determination are

- (1) Whether, the Claimant is entitled to a half share of three of the Defendant's properties being Parcel 9 situate at Tindale Road; Parcel 67 situate at Golden Grove; and Parcel 32 situate at Tindale Road.
- (2) Whether the Claimant is entitled to a half share of the interest of the Defendant in his fishing vessel; and a half share in the earnings from the operations of the said fishing vessel; and an accounting for the income from the operation of the fishing vessel

- (3) Whether the Claimant is entitled to an accounting for rental income in respect of four wooden houses owned by the Defendant
- (4) Whether the Claimant is entitled to injunctive relief

The Law

[39] As learned counsel for the Defendant has quite correctly stated, there is no legislation in Antigua and Barbuda which addresses the division of property in a common-law relationship. Counsel for the parties agree that the court must therefore look to the case law on constructive and or resulting trust to establish her entitlement, if any. Both counsel made reference to the Antigua case of **Abbot v Abbott** [2007] UKPB] 53. Counsel for the Claimant also relied on the principles laid down in the leading cases of **Gissing v Gissing**, [1971] AC 886; (1970) 2 All ER 80; **Pettitt v Pettitt** (1969) 2 All ER 385; alongwith **Lloyd's Bank, PLC v Rossett and another** (1990) 1 All ER 1111; **Burns v Burns** (1994) 1 All ER 252-255; **Providence v Providence**, ANUHCV 2002/0327

[40] A reading of the above cases, along with others⁵, seem to establish the following propositions and or principles respecting not only the disposition to be made of matrimonial property in the event of a marriage break up; but also in the case of a man and his lover; who had been living in what is called common law relationship; and a married man and his mistress who had been living together for a lengthy period⁶ in what is also called common law relationship:

1. The law does not recognise a concept of family property whereby people who live together in a settled relationship share rights of ownership in the assets acquired and used for the purposes of their life together. Nor does the law acknowledges that the mere fact of doing work on the asset of one party to the relationship, the other party will acquire a beneficial interest in that asset;

⁵ Such as *Cook v Head*, per Lord Denning; *Cupid v Thomas*
^s As in *Burns and Burns*, *supra*

2. The question whether one party to the relationship acquires rights to the property, the legal title of which is vested in the other party, must be answered in terms of the existing law of trusts. There are no special doctrines of equity applicable in this field alone.
3. In the absence of a proved or inferred bargain or intention, the making of subsequent indirect contributions to general household expenses is insufficient to found an interest.
4. If the legal estate in the joint home is vested in one of the parties who is the legal owner, the other party, 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: (1) that there was a common intention that both should have a beneficial interest, and (2) that the claimant has acted to his or her detriment on the basis of that common intention.
5. Once the common intention and the actions to the Claimant's detriment have been proved from direct or other evidence, in fixing the quantum of the Claimant's beneficial interest, the court can take into account the indirect contribution by the Claimant, such as the Claimant's joint household expenses.
6. Where there has been no written declaration of agreement, nor any direct provision by the Claimant of part of the purchase price, so as to give rise to a resulting trust in favour of the Claimant, the Claimant must establish a common intention between her and the Defendant, acted on by her, that she should have a beneficial interest in the property. 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.
7. Where there is no evidence of intention other than contributions to joint expenditure; in such a case, there is insufficient evidence to prove any beneficial interest, and the question of the extent of that interest cannot arise.

[41] With those principles in mind, I proceed to examine the evidence to ascertain whether there was a common intention between the parties that the Claimant should have a beneficial interest in the properties specified.

Parcel 9: Acquisition

- [42] Even though the Claimant claimed interest in other parcels of land, allegedly owned by the Defendant, Parcel 9 was the main focus at trial, and in the written submissions of the parties. Parcel 9 is the land on which the dwelling house stands - the dwelling house in which the Claimant, the Defendant and their son Damian live. Parcel 9 is approximately 0.05 of an acre or 2,178 square feet. The Valuation Report of Mr Wayne Martin, placed a value of \$21,780.00 on Parcel 9 (the land alone) as at 12th March 2014.
- [43] At paragraph 4 of her Statement of Claim, the Claimant asserted that she contributed to the acquisition of this property. In her Witness Statement she stated that Mr Simon acquired the land in 1980 during the time they lived together. Under cross examination, the Claimant stated that she met the Defendant with Parcel 9. The Defendant, on the other hand stated that he acquired Parcel 9 before he met Ms Joseph. This could not be true in a situation where their first child together was born in 1978; and considering that he said he met the Claimant in 1971 and they began an intimate relationship in 1975. There is an exhibit of the Certificate of Title for Parcel 9 which shows that Parcel 9 was acquired in January 1980. I find as a fact, based on the evidence, that Parcel 9 was acquired by the Defendant in January 1980 after he met the Claimant, during the time they were living together and that Mr Simon is named as the sole registered proprietor thereof.
- [44] Did Ms Joseph contribute to the acquisition of Parcel 9? Mr Simon says she did not. Ms Joseph on the other hand said she did. The evidence presented by Ms Joseph in respect of acquisition is insufficient to convince me that Ms Joseph contributed financially to the acquisition of Parcel 9. For one thing, there was no evidence from the Claimant of any payment made by her that could properly be regarded as referable to the acquisition of Parcel 9. The evidence which I accept is that Parcel 9 was acquired solely by the Defendant, in 1980, and there was a 2 - bedroom wooden house on it But financial contribution alone is not the only thing that matters. Indirect contribution matters, as was determined in **Stonich v Stonich**, (2003) Civil Appeal No 17 of 2002.) such as looking after the home and caring for the children and the household, which the Claimant did.

Parcel 9: The Dwelling House standing thereon

- [45] Was there a common intention between the parties that the Claimant was to have a beneficial interest in the house which stands on Parcel 9? Counsel for the Defendant, after analysing the evidence, submitted that the Claimant has failed to prove that there was a common intention between the parties, and that she relied upon that common intention to her detriment; or that she significantly altered her position. Counsel posited that the Claimant, during her relationship with the Defendant did nothing more than what is expected of two people living together and thus, submitted counsel, the claim should be dismissed.
- [46] Counsel for the Claimant on the other hand, after analysing the evidence, submitted that the evidence before the court suggests that there was in fact a common intention to share the dwelling house on Parcel 9 as a property to be owned jointly by the parties. Counsel urges the court to find that the initial two bedroom wooden house which stood on Parcel 9 was completely demolished in the 1990's and an entirely new and sturdy six-bedroom house was built in its place. Counsel also asked the court to find as a fact that the Claimant contributed directly, financially, by using her own resources to have the plans drawn, the foundation dug, plumbing installed, purchasing blocks, sand and stone and other building materials, importing windows, doors, locks, bath tubs and so forth to be used in the construction and performing manual labour, as well as supervising the overall operations. As far as counsel was concerned, the Claimant altered her position significantly to her detriment to give rise to a constructive trust, by investing time, effort, labour and supervision in the construction of the dwelling house, and quite apart from that, she invested indirectly and financially in buying concrete blocks and other items such as toilet suites, face basins and other household fixtures and fittings.
- [47] In my view, the evidence presented of the conduct of the parties, is sufficient to enable the court to infer a common intention between the parties that the Claimant was to have a beneficial interest in the house which stands on Parcel 9. Both parties lived together in a relationship akin to marriage for over 25 years, although they have been in an intimate relationship for over 40 years. I do not think it is a very convincing argument for the Defendant to say that he had no agreement with the Claimant that the house was going to be a family house. Out of his own mouth he said

that he told the Defendant that he was going to raise the house and she said she was going to buy some blocks, which she did, and she used them on the house. He never said that he told her not to buy the blocks. It is reasonable to suppose then, that there was some discussion and agreement that she would have acquired some right to a share in the house. She bought the blocks with his knowledge and consent. Indeed, the improvement to the house was made for the common enjoyment benefit of his new family, so to speak, that is to say, the Defendant, the Claimant and their two children. I believe the Claimant when she stated that her means of income was the box monies which she threw, the earnings from the breakfast and grocery shops. I believe her story as to the various contributions she made in monies worth and time, and labour and materials.

[48] In the case of **Austin v Austin** (1978) 31 WIR, 46, one of the issues for determination was the extent of the beneficial interest of a man and his mistress who had both made substantial contributions to the acquisition of a dwelling house, . Worrell J said;

"The evidence discloses that each party made substantial contribution, and in the absence of any evidence to quantify their shares, I would adopt the principle stated by Sir Raymond Evershed in *Rimmer v Rimmer* [1959] as a guide in determining their respective beneficial interest. The principle is stated thus, "where the court is satisfied that both parties have substantial beneficial interest, and it is not fairly possible to assume some more precise calculation of their shares, I think that equality necessarily follows."

[49] And in **Cooks v Head** [1972] All ER 38 at 4.1 Lord Dinning MR said:

"The particular case of a man and his mistress came before the Court of Appeal in **Diwell v Farnes**, [1959] 2 All ER 379. The court was divided in opinion. The majority thought that a mistress was not in the same position as a wife. She could recover her actual contributions to the purchase price, but could not claim any part of the windfall on resale. Willmer LJ approached the case much as we approach cases between husband and wife. He would have given the mistress one-half. His approach is more in accord with recent developments.

[50] Accordingly, Worrell J went on to hold that each party was entitled to hold a one-half of the beneficial interest in the property

[51] In the present case, I am not of the view that the contributions of the Claimant to the improvement was insubstantial. Rather I hold the view that her contribution was sufficient, and that by virtue of the common intention inferred between them, she is entitled to a one half share of the value of the dwelling house which stands on Parcel 9. The Defendant, having allowed the Claimant to buy concrete blocks, and contribute her time, labour and energy on the improvements to the house, it would be inequitable to allow the Defendant to deny the Claimant a beneficial interest in the dwelling house. Accordingly, I would impute a constructive trust whereby the Defendant holds the dwelling house in trust for himself and the Claimant. Considering all the evidence, I think that the appropriate share of the Claimant in the land and the dwelling house standing thereon should be one-half.

Parcel 67

[52] Parcel 67 is land only. It is located at Bendals, and not at Golden Grove as the Claimant alleges in paragraph 10 of her Witness Statement, and which she re-stated during cross examination. The evidence reveals that this Parcel was acquired by the Defendant in 1971. The Claimant claims a one half share in this property or the equivalent. She admits, however that she made no contribution whatsoever to the acquisition of this Parcel. The evidence is that the Defendant no longer owns Parcel 67, he having sold it to his cousin Isaiah Knight in 2007, but actually completed the transfer in July 2012 after the Claimant had filed her claim. Mr Cumberbatch submits that this transaction was not genuine; that it was done to defeat the claim for a one-half share of Parcel 67. The Defendant's position is that the land was purchased before he met the Claimant, so she could not have contributed to its acquisition and did not contribute to its acquisition, and thus, she had no right to a beneficial interest therein, and was not entitled to any of the proceeds of sale.

[53] I am in agreement with the Defendant's submission. In my judgment, there was nothing to bar the Defendant from selling Parcel 67. I find that the land was sold since 2007, but was actually

transferred in 2012, and registered in 2013. It having been sold, the issue of the entitlement of the Claimant to a one-half share does not arise. And in any event, there is no evidence led by the Claimant upon which I can make a finding that she is entitled to a beneficial interest in Parcel 67 or the proceeds of sale thereof. Her claim in this regard is devoid of merit, and it is therefore refused.

Parcel 32

[54] This is the parcel upon which the four wooden houses stand. At the time of trial, there was a charge over this property in favour of the Antigua and Barbuda Development Bank to secure a loan of \$246, 538.76. , (which was entered into by the Defendant and one of his sons, Ivan Simon) Counsel for the Claimant has submitted that this transaction represents an attempt to defeat the Claimant's claim for a one-half beneficial interest in Parcel 32, and for an accounting in relation to rents collected for the period 1981 to present.

[55] Counsel for the Defendant has correctly pointed out that the Claimant has not pleaded that she is entitled to a 50% beneficial interest in this property. Notably, that claim was made at paragraph 15 of her Witness Statement. She is bound by her pleadings. The witness statement amplifies the pleadings; so if a claim is not pleaded, it cannot be introduced in the Witness Statement. The purpose of the pleadings is to mark out the parameters of the case that is being advanced for the Claimant, to enable the Defendant to properly reply to it.⁷ It is therefore unnecessary to make a finding as to the Claimant's entitlement to a one-half beneficial interest in Parcel 32.

[56] As to the accounting for the claim for rental income from 1981 to present, the court takes the view that having ruled that the Claimant has no beneficial interest in Parcel 9, the claim for accounting falls away. However, in case I am found to be wrong, the court is of the view, that the Claimant has failed to prove that she contributed towards the improvement of the wooden houses on Parcel 9. The Defendant has admitted that the Claimant did in fact collect rent for him during the time he was at sea, and he also admitted that the Claimant secured tenants for the houses, However, to my mind, these events do not by themselves entitle the Claimant to an accounting for rental

⁷ See *East Caribbean Flour Mills Limited v Ormiston Ken Boyea*, Saint Vincent and the Grenadines Civil Appeal No 12 of 2006.

income. - I hold the view that they are insufficient to entitle the Claimant to any accounting in respect of the rental income for the properties. In the result, the claim for an accounting for rental income from the four wooden houses which stand on Parcel 32 is devoid of merit and is refused.

The fishing vessel

[57] The Claimant claims a one half share in a commercial fishing vessel which she says is 100 feet long and valued at \$500,000.00 The Claimant says he has never owned such a fishing vessel, and he has given the details of all the fishing vessels he has ever owned including the lengths of the vessels. There has been no challenge to the details given. He gave details of the loan he obtained from the Antigua and Barbuda Development Bank to complete his last boat, which he is still paying for today. Counsel for the Defendant has submitted among other things that the Claimant has failed to prove that the Defendant ever owned a 100ft long commercial fishing vessel valued at \$500,000.00. Counsel for the Defendant has not advanced any argument /submission in relation to any common intention between the parties that the Claimant's was to have a beneficial interest in the fishing vessel acquired and operated by the Defendant. The Claimant seem to be basing her claim for a share in the fishing vessel on her assertion that she pooled her resources with those of the Defendant, during which time he acquired the last fishing vessel, and on the assertion that she sold fish for the Defendant.

[58] I can find no evidence of a common intention between the parties that the Claimant was to acquire a beneficial interest in the fishing vessel operated by the Defendant. While I do not think that the Claimant is misleading the court when she said that she assisted the Defendant in selling fish, I am not of the view that this activity in and of itself is sufficient to lead me to impute or infer a common intention that the Claimant was to have a beneficial interest in the fishing vessel: I believe the Defendant when he said that he never took any money from the Claimant when she sells fish. I believe him when he says that they pooled no resources together; that they had their own bank book. The Claimant herself admitted during cross examination that she gave her lawyer her two bank books. I believe him when he said that it was he who built the shop for the Claimant to assist her in earning an income of her own and be self sufficient. I believe him when he said that he assisted in stocking the shop with items for sale which he bought when he travelled overseas on his boat to St Martin, Puerto Rico, St Thomas, Saba and so forth. The

Claimant has told the court that she derived her income from the box hand, the grocery shop and breakfast shop. It would seem a reasonable inference that that the Defendant gave the Claimant the footing she got in terms of making an income of her own.

[59] In the end, I am of the view that the Claimant's claim for a 50% share of the Claimant's interest in a 100 feet fishing vessel or any fishing vessel owned by the Defendant must be denied. Obviously, the Claimant's claim for an accounting of the income from the operations of the said fishing vessel or any fishing vessel owned by the Defendant must also be denied. So is the Claimant's claim for a declaration that the Claimant is entitled to a share of the of 50% in the net earnings from the operation of the said fishing vessel during the period 1988 to judgment. And I so order.

[60] The general rule is that the successful party is entitled to costs of the proceedings. In this case success was divided. Ordinarily, in cases like this, the order is that each party pays his/her own costs. I would therefore order that each party shall bear his/her own costs of the proceedings.

Conclusion

[61] For all the reasons stated above, I make the following declarations and orders:

1. A declaration that the Defendant is entitled to a one-half share in the property situate at Tindale Road registered as Registration Section: Kentish & Ottos; Block 69 1691 C: Parcel 9.
2. A declaration that the Defendant holds the said property on trust for himself and the Claimant;
3. An order that the Defendant is at liberty to sell the entire premises and compensate the Claimant for her one-half share of the proceeds of sale; alternatively the Claimant is at liberty to buy out the interest of the Defendant in the entire property and compensate the Defendant for his one half share of the property

4. An order that either party is at liberty to buy out the other party's share, and do all that is necessary and property to effect transfer of the property to the buyer.
5. An order that the claimant's claims for a one half share in Parcel 67, and in the fishing vessel do stand dismissed;
6. And order that the Claimant's claim for an accounting in respect of the earnings from the rental of four wooden houses which stand on Parcel 32 do stand dismissed as being devoid of merit.
7. An order that the Claimant's claim for an accounting of the income from the operations of a 100ft commercial fishing vessel or any fishing vessel owned by the Defendant; and the Claimant's claim for a declaration that the Claimant is entitled to a share of 50% in the net earnings from the operation of the said fishing vessel during the period 1988 to judgment do stand dismissed as being without merit.
8. Both parties do bear their own costs of the proceedings.

[62] I am grateful to the parties for their helpful submissions and authorities

PEARLETTA E. LANNS

PEARLETTA E. LANNS
High Court Judge [Ag]