

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

**CLAIM NO. GDAHCV 2017/0203
BETWEEN:**

DEVON SMITH

Claimant

AND

**ELIZABETH HALLEY
NAUREEN JOHN**

Defendants

Appearances:

Mrs. Celia Edwards QC, with Mr. Deloni Edwards and Ms. Celene Edwards for the claimant

Mr. Derick F. Sylvester, with Ms. Cathisha Williams and Ms. Hazel B. Hopkin for the defendants

2018: December 7;

2019: May 22.

JUDGMENT

[1] **GLASGOW, J.:** The claimant, Devon Smith ("Mr. Smith") seeks an order against the defendants for possession of premises being the upper floor of a dwelling house at La Taste in the parish of Saint Patrick in the State of Grenada. The ^{1st} defendant, Elizabeth Halley, ("Ms. Halley") counterclaims for a declaration that she is entitled to an undivided forty percent (40%) share or a reasonable share in the dwelling house aforesaid. She further seeks an order that the said dwelling house be valued, and the claimant forthwith pay to her, her share of the dwelling house aforesaid. The ^{2nd} defendant, Naureen John, ("Ms. John") also counterclaims for reasonable compensation for four (4) years of domestic services and child care given to the claimant.

Background

- [2] Mr. Smith and Ms. Halley had been in an intimate relationship for several years, which produced two children, one of whom eventually died. The two met while they were in secondary school. Mr. Smith alleges that he and Ms. Halley first got together in or about the years 1998 to 1999. He was occasionally occupied in the trade of barbering at the time of the commencement of their relationship. He was also a professional cricket first for the Windward Islands Cricket team then the West Indies Cricket team. His evidence exposes that his financial Circumstances improved significantly once he commenced his career with the West Indies Cricket team. Engagement with his barbering trade appears to have declined after he started playing for the West Indies Cricket team.
- [3] At some during the courtship, they resided together in the downstairs of Ms. Halley parents' home for a number of years. Ms. Halley alleges that while they lived in the downstairs of her parents' home, Mr. Smith did not financially contribute to the household and it was her parents and herself who assisted and sustained him. While living at the home of Ms. Halley's parents the couple became engaged to be married.
- [4] Mr. Smith states that he got the opportunity to play for the West Indies Team as a cricketer in the year 2002.
- [5] Ms. Halley states that she was employed as a Data Entry Clerk at GIFTA which is now known as the Grenada Authority for the Regulations of Financial Institution (GARFIN) from the year 2003 until 2013 when her services were terminated. Her evidence indicates that she did not seek further employment post the termination of her employment at GARFIN. Instead she focused her time on caring for the medical needs of the surviving child, Jayden Smith, who has a number of ailments.
- [6] On 27th August 2008, Mr. Smith purchased land situate at La Taste in the parish of Saint Patrick measuring Fifteen Thousand Two Hundred and Thirty-six square feet

(15,236 sq. ft.), which is recorded in the Deeds and Land Registry of Grenada in Liber 37-2008 at page 138.

[7] Shortly thereafter, Mr. Smith mortgaged the said land to the Grenada Co-operative Bank Limited on 29th August 2008, which is recorded in the Deeds and Land Registry of Grenada in Liber 37-2008 at page 143. Both transactions above were done in Mr. Smith's name only.

[8] Sometime in the year of 2008, Mr. Smith alleges that he contracted his brother and Ms. Halley's father to build a two-storey dwelling house on the said land ("the property"). He alleges that he paid his brother and Ms. Halley's father to build the property utilizing cash in the sum of \$300,000.00 and the proceeds from the said mortgage with the Grenada Co-operative Bank Limited in the sum of \$500,000.00.

[9] Ms. Halley says that it was always intended for them to build the house as the matrimonial home for them to reside together as a family. Ms. Halley's assertion as to the purpose for the house also forms the soil on which the contention in this case is sown. For it is her further position that not only was the house to serve as the family home, it was also intended that she would share a beneficial interest in the house.

[10] In her evidence, Ms. Halley explains that -

[N]otwithstanding that the Deed for the property is in the Claimant's sole name and he has been responsible for the majority of the financing for the purchase of same and the construction of the house thereon, I, including my family, have made substantial financial contribution to the same... My other financial contributions include -

(a) During the time of my employment, I purchased ... from my own funds: furniture, wares, pots, a washing machine, curtains and other

decorations and equipment for the gym. I also paid the telephone, internet and cable bills from 2009 to 20121.

(b) Additionally, the claimant and I travelled to New York to purchase furniture and furnishings ... I made most of the decorative decisions for the house including the lighting fixtures, paint and tiles; the decorating of the subject house was mainly executed by the Second Defendant, Naureen John and me.²

[11] Ms. Halley also relies on her non-financial contributions-

My non – financial contributions include but are not limited to the care of the children of the family (living and deceased) and domestic duties such as cooking, cleaning, washing and the upkeep of the yard and surroundings. I have been a loyal, loving and supportive partner to the Claimant as well as a loving, committed mother to their [sic] children. I take care of the Claimant and sees [sic] to his every need. The Claimant is seldom home and I tends [sic] to his affairs and the affairs of the subject property in his absence and even when he is present at home.³

[12] Ms. Halley also testifies that her father contributed to the construction and development of the property -

(a) Reducing the cost of construction to \$800,000 when the true cost of construction was in excess of one million...

(b) Paying a portion for the plan in the sum of \$4000.00.

(c) Purchase of the 622 Sq.Ft of/and...

¹Ms. Halley lists and exhibits a number of bills and statements at paragraph 12 of her witness statement.

² Ibid at para. 13

³ Ibid at para. 28

(d) *The excess of \$90,000.00 for construction when [sic] the Claimant said definitely did not come from him could only be attributed to Ms. Halley...*

(e) *He also helped to negotiate a lower sum for the plans from \$75,000.00 to \$38,000.00...⁴*

[13] Her brother's contribution are listed as-

My brother, Daniel Halley, also took care of the lawn and flower beds with the help of his friends free of charge. He also repaired the front gate when the Claimant reversed into it, also free of charge. Further my brother did paint work and installed burglar bars for part payment. I paid my brother approximately \$1000.00 for the erection of the back gate after the house was burglarized and further paid for repairs to some of the doors..s

[14] Ms. Halley submits that the sum total of her and/or her family's financial and non-financial contributions demonstrates that she has a beneficial interest in the property. On this claim, she asks for that interest to be quantified and distributed to her.

[15] The intention stated by Ms. Halley is strongly disputed by Mr. Smith. His rebuttal is that he solely paid for the mortgage and all property taxes with respect to the property. He rejoins that there was never an intention that Ms. Halley would share a beneficial ownership of the property.

[16] Mr. Smith alleges that, in addition to solely purchasing the land and paying for the construction of the house, it is he who deposited \$40,000.00 of his money onto his credit card account to purchase furnishings for the property in New York. Both Mr.

⁴ Ms. Halley's submissions filed on 14th January 2019 at para. 30
s Supra, note 1 at para. 12(ix)

Smith and Ms. Halley travelled to New York to purchase furnishings for the property.

[17] Ms. John claims that Mr. Smith asked her to move in the property in 2009, where she alleges that she served as a live-in housekeeper and caregiver for the children and made errands. She further claims that she cooked, cleaned and did laundry for the household including Mr. Smith without compensation from him for her services. She therefore claims compensation for her contribution to the property and her four years of service.

Issues

[18] The issues that arise for the court to determine are as follows:

- a) Whether Ms. Halley is entitled to a share in the property.
- b) If yes, what share is she entitled to?
- c) Whether Ms. John is entitled to compensation from the Claimant for domestic services.
- d) If so, how much is she entitled to?

Mr. Smith's submissions

[19] In his prayer for relief, Mr. Smith sought an order possession. Ms. Halley is no longer in occupation of the property. However, Mr. Smith still requests an order for possession since he believes that without such an order Ms. Halley may resume occupation.

[20] In respect of Ms. John, learned Queen's Counsel for Mr. Smith submits that Ms. John admitted that at no time did she have any discussion with Mr. Smith with respect to payment for her services. Therefore, it is argued that by virtue of that admission Ms. John's counterclaim for compensation is not proven and must fail.

[21] The case for Mr. Smith continues that since he and Ms. Halley were never married, the principles of the Matrimonial Cause Act are not applicable. Dictum is recited from the Privy Council in **Sharon Otway v Jean Gibbs**⁶, which states that '*Grenada has no statute to make financial provisions for dependents of [a]...person*'.

[22] The court is urged to find that since the property is not registered in the joint names of Mr. Smith and Ms. Halley, Ms. Halley is tasked with the legal burden of proving that the parties intended that she would also have an interest in the property.

[23] With respect to the present case, learned Queen's Counsel points out that there is no evidence that Ms. Halley contributed financially to the purchase or construction of the property. Indeed it is said that she admits the fact that Mr. Smith solely financed the purchase of the land and the construction of the house. In the circumstances, counsel argues, in order for Ms. Halley to establish any right as she asserts, she must show express agreement for shared ownership or direct or other contribution, from which an intention to share the asserted beneficial ownership can be inferred. It is opined that the court would be hard pressed to find any evidence of an express agreement that Ms. Halley would own an interest in the property. There is no such material before the court.

[24] Additionally, it is argued, there is nothing presented to the court from which it can infer a common intent to share the beneficial interest in the property. The court is reminded that it is Mr. Smith who paid the mortgage, bills, save and except, the cable and telephone bills and the purchase of some furniture, wares and gym equipment. Such matters as joint accounts are missing in this case. Starkly, learned Queen's Counsel notes, both Mr. Smith and Ms. Halley maintained separate accounts even though Ms. Halley had access to the pin number of one of Mr. Smith's accounts. Counsel explains that it is not unusual for people, who are

⁶(2000) 58 WIR 164

living together to share account information but posits that this does not mean that they intended to own or shares in each other's finances and certainly would not entitle them to own the other's property. Counsel reasons that the mere purchase of gym equipment or the fact that the Mr. Smith and Ms. Halley share a child cannot endow her with equitable ownership of the property.

- [25] Ms. Halley's admission that Mr. Smith deposited \$40,000.00 onto his credit card account to purchase furnishings for the property is also emphasized. In this regard the court is asked to note the fact that Ms. Halley has not presented any evidence of how she spent the \$10,000.00 loan that she testifies was taken out to purchase furniture. Learned Queen's Counsel repeats the view that the purchase of furniture for the property could not afford Ms. Halley a beneficial interest in the same.
- [26] Comment is also made on the contribution allegedly made by Ms. Halley's father. In this regard it is posited that the property was built in accordance with a building contract and Ms. Halley's father was paid as per said building contract. The fact that Mr. Douglas built the same at a concessionary rate does not equate to an intention for Ms. Halley to have a beneficial or other interest in the property.
- [27] The foregoing posture is also held in relation to the purchase of the adjoining piece of land encroached on by Mr. Smith. Learned Queen's Counsel submits that Mr. Smith took a mortgage from the bank to build the property and it was from the proceeds of the mortgage that the adjoining parcel of land was purchased. In his evidence, Ms. Halley's father conceded that the said account was used to disburse sums paid to him under the building contract.
- [28] Learned Queen's Counsel concluded her submissions by reiterating that Ms. Halley cannot establish that she acted to her detriment or that she contributed in a manner that would satisfy the test to give her a beneficial interest. In closing, counsel declares, that at the highest, Ms. Halley was a mere licensee and such license was terminated by notice when the relationship broke down.

Ms. Halley's submissions

- [29] Learned counsel for Ms. Halley's opening salvo is that in the instance of cohabiting couples the court must examine the overall context of the relationship and adopt a practical approach to determine the true intention of the parties. He relied on the dictum of Lord Hope of Craighead in **Stack v Dowden**⁷ in proffering this view.
- [30] He stated that the court can infer or impute a bargain in the circumstances where when examining each individual case, it is fair and equitable to do so. Counsel submitted that the first question the court must ask is whether there was any agreement, arrangement or understanding reached between the parties. He went further to submit that in the absence of above, the court can examine the conduct of the parties to infer a common intention to share the property beneficially and as such to give rise to a constructive trust.
- [31] In relation to the contribution of Ms. Halley to the purchase of the property, counsel repeated much of the material set out above. He further indicated that during the periods when Mr. Smith was away playing cricket, Ms. Halley, who was employed during that period, paid the bills and took care of the property, which enabled Mr. Smith to pay the mortgage.
- [32] Counsel repeated the claim that Ms. Halley's father contributed by reducing the cost of construction of the property, paying for a portion of the cost of the land and negotiating for a lower sum for the plans of the property among other things.
- [33] He went on to expound on the principles in **Grant v Edwards**⁸, where the plaintiff in the action made no direct contribution to the house, but a substantial contribution was made by raising the children and housekeeping. He continued

⁷ [2007] UKHL page 17

⁸ [1987] 1 FLR 87

that the court in **Grant** drew a distinction between conduct from which common intention can be inferred and conduct which amounts to acting upon it.

[34] Counsel referred the court to Sir Nicholas Browne-Wilkinson's VC statements in **Grant** where he analyzed the judgment of Lord Diplock in **Gissing v Gissing**⁹ and stated that Lord Diplock's principles can be summarized into three sections: the nature of the substantive right; proof of existence of that right; and the quantification of that right.

[35] Counsel submitted that it is for Mr. Smith to displace the burden that Ms. Halley did not act to her detriment on the common intention. He also submits that the act of living together; examining the land; planning a family; construction of the property; decorating ; paying bills; moving into the property; having a family and utilizing the resources of Ms. Halley's family and friends show that Ms. Halley acted to her detriment.

[36] He summed up that position by submitting that Mr. Smith has failed to displace the above burden and relied on the dictum of Sir Nicholas Browne-Wilkinson in **Grant**¹⁰.

[37] He stated that Ms. Halley indicated both in her evidence in chief and under cross examination that Mr. Smith always said that the house is their home. The bed was carved with their names at Mr. Smith's request; their child is buried on the property; she paid bills; took care of the children and she was the homemaker. He continued that they shared all bills and used each other's credit cards. He states that they were married, but for the ceremony.

[38] Counsel referred the court to **Eves v Eves**¹¹ where he expounded that the plaintiff, despite not contributing financially to the property was told she would own the

⁹[1970] 2 All ER 780

¹⁰Ibid at page 100

¹¹[1975] All ER at page 768

property jointly, but for her age. He stated that Ms. Halley was told that it was their family home and it would be their matrimonial property. He went on to argue that it was their property by Mr. Smith's conduct despite not adding her name on to the deed and relied on the dictum of Lord Denning in *Eves v Eves*¹².

[39] Further, counsel argued that the concept of detriment must be examined in the round and not as a narrow or technical concept. He then referred the court to the authority of *Gillett v Holt*¹³ where the court analyzed the concept of detriment as being a broad concept and not a narrow one.

[40] A constructive trust is said to be created by the trustee holding property in trust for the *cestui que* trust by virtue of the conduct of the trustee and/or induced the *cestui que* trust to act to his detriment. It is further said that the trust is normally inferred and can be shown by direct or indirect contributions .

[41] At paragraph 50 of learned counsel's submissions, he reasons that the court has a wide discretion when considering the concept of proprietary estoppel and the applicable factors in determining Ms. Halley's contribution. He went further to submit that the court can decide to what extent relief can be given and what form it can take. He argues this discretion allows the court to consider Ms. Halley's father and brothers' contribution as being attributed directly to her. The principles in *Abbott v Abbott*¹⁴ are presented as supporting this view.

[42] With respect to the authority of *Gibbs v Otway*¹⁵, counsel explains that the Court of Appeal's ruling in that decision was not premised on proprietary estoppel in relation to real estate, since there was an agreement at the trial of the matter that the Belmont property resided in the applicant and the Grand Anse property in the

¹² 1bid

¹³ (2000) 2 All ER at page 289

¹⁴ [2007] UKPC at page 53

¹⁵ GDAHCVAP1997/19

respondent. He maintains that the authority of **Gibbs** does not apply to the present case and that it does not assist Mr. Smith, but supports Ms. Halley's position that there was a common intention based on the relationship of the parties.

[43] In respect of Ms. John's counterclaim, counsel presents her situation as being based on a promise by Mr. Smith to pay her for her services even though she was not willing accept any money from him.

Discussions and conclusion

[44] The competing contentions in cases of this nature are never easy to reconcile. Speaking of the challenges facing judges in cases involving property in the joint names of parties, Baroness Hale of Richmond in **Stack v Dowden**¹⁶ explained some of the difficulties thusly –

This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is wanted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual. Nor may disputes be confined to the parties themselves. People with an interest in the deceased's estate may well wish to assert that he had a beneficial tenancy in common. (Bold emphasis mine)

[45] As far back as 1969 in **Pettitt v Pettitt**¹⁷ Lord Morris of Borth -Y- Gest also ruminated on the court's role –

¹⁶ [2007] UKHL 17 at para. 68

¹⁷ [1969] 2 ALLER 385 at page 395

*I think that this was in accord with what had been said by Evershed LJ in Re Rogers' Question when he pointed out that **the task of a judge after seeing and hearing the witnesses was ([1948] 1 AllER at pp 328, 329)-***

"... to try to conclude what at the time was in the parties' minds and then to make an order which, in the changed conditions, now fairly gives effect in law to what the parties, in the judge's finding, must be taken to have intended at the time of the transaction itself."

The emphasis on ascertaining what the parties intended at the time of a transaction shows that the mention of changed conditions did not mean that changed conditions altered property rights: property rights once ascertained, and ascertained by reference to what was the intention of the parties at the time of a transaction, had to be honoured and fairly given effect to even though conditions had changed. {Bold emphasis mine)

[46] In **Lloyds Bank Pic v Rosset and another**¹⁸, Lord Bridge of Harwich comments on the issue with reference to married couples but undoubtedly his thoughts are quite applicable to the resolution of property disputes between unmarried couples

The question the judge had to determine was whether he could find that before the contract to acquire the property was concluded they had entered into an agreement, made an arrangement, reached an understanding or formed a common intention that the beneficial interest in the property would be jointly owned. I do not think it is of importance which of these alternative expressions one uses. Spouses living in amity will not normally think it necessary to formulate or define their respective interests in property in any precise way. The expectation of parties to every happy marriage is that they will share the practical benefits of occupying the matrimonial home whoever owns it. But this is something quite distinct

¹⁸ [1990] 1All ER 1111at page 1115

from sharing the beneficial interest in the property asset which the matrimonial home represents. These considerations give rise to special difficulties for judges who are called on to resolve a dispute between spouses who have parted and are at arm length as to what their common intention or understanding with respect to Interests in property was at a time when they were still living as a united family and acquiring a matrimonial home in the expectation of living in it together indefinitely. (Bold emphasis mine)

Overall context to be considered

[47] In arriving at what the parties intended, the overall context and course of their relational dealings must be considered. Luckhoo JA in *Abdool Hack v Rahieman*¹⁹ explained the approach -

*But, be that as ft may, it is now abundantly clear that the law has moved away from the position of treating a man and his mistress as strangers, and now resolves all issues as to their respective beneficial interests in property which is acquired by their joint efforts in the same manner as is done in similar disputes between married couples, and in arriving at their respective interests, consideration is not to be limited to the mere money contributions made, but must include all other relevant facts and circumstances. To quote again from Lord Denning in *Cooke v Head* ([1972]2 All ER 38, 1 WLR 518, 116 Sol Jo 298) [1972]2 All ER 38 at p 42:*

*'The matter must be looked at broadly j ust as we do in husband and wife cases. We look to see what the equity is worth at the time when the parties separate. We assess the shares as at that time. If the property has been sold we look at the amount which has been realised, and say how it is to be divided between them. Lord Diplock in *Gissing v Gissing* intimated that it is qufte legftimate to infer that...*

¹⁹(1977) 27 WIR 109 at 118

the wife should be entitled to a share which is not quantified immediately on the acquisition of the home but should be left to be determined when the mortgage was repaid or the property disposed of.

Likewise with a mistress (Bold emphases mine)

[48] Baroness Hale of Richmond also commented on this issue in *Stack v Dowden*²⁰

The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.

Oxley v Hiscock was, of course, a different case from this. The property had been conveyed into the sole name of one of the cohabitants. The Claimant had first to surmount the hurdle of showing that she had any beneficial interest at all, before showing exactly what that interest was. The first could readily be inferred from the fact that each party had made some kind of financial contribution towards the purchase. As to the second, Chadwick LJ said this, at para 69:

... in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have – and even in a case where the evidence is that there was no discussion on that point – the question still requires an answer. It must now be accepted that (at least in this court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And in that context, the whole course of dealing between them in relation to the property includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and

²⁰ [2007] UKHL17 at paras. 60-61

utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home. (Emphasis supplied)

*That may be the preferable way of expressing what is essentially the same thought, for two reasons. First, it emphasises that the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. Second, therefore, it does not enable the court to abandon that search in favour of the result which the court itself considers fair. For the court to impose its own view of what is fair upon the situation in which the parties find themselves would be to return to the days before *Pettitt v Pettitt* [1970] AC 777 without even the fig leaf of s 17 of the 1882 Act.* (Bold emphases mine)

Where does the burden lie?

[49] The burden falls on Ms. Halley to demonstrate that there was an intention for her to acquire an interest in the property-

*The cases can be broken down into those where there is a single legal ownership and those where there is joint legal ownership. There must be consistency of approach between these two cases a point to which my noble and learned friend Lord Neuberger of Abbotsbury has drawn our attention. I think that consistency is to be found by deciding where the onus lies if a party wishes to show that the beneficial ownership is different from the legal ownership. I agree with Baroness Hale that this is achieved by taking sole beneficial ownership as the starting point in the first case and by taking joint beneficial ownership as the starting point in the other. In this context joint beneficial ownership means that the shares are presumed to be divided between the beneficial owners equally. **So in a case of sole legal ownership the onus is on the party who wishes to show that he has any beneficial interest at all, and if so what that interest is.** In a case of joint legal ownership it is on the party who wishes to show that the beneficial interests are divided other than equally.²¹ (Bold emphasis mine)*

²¹ *Stack v Dowden* [2007] UKHL 17 at para. 4 per Lord Hope of Craighead

[50] More specifically,

*The onus is then on the party who contends that the beneficial interests are divided between them otherwise than as the title shows to demonstrate this on the facts.*²²

*Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. **So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.***²³ (Bold emphasis mine).

Discharging the burden

[51] What then are the specific matters to be established in order for Ms. Halley to discharge the burden of proving it was intended that she owns a beneficial share of the subject property? This area of the law is well strewn with dicta spanning many decades both from our parts and beyond. As anticipated, the parties have produced a plentiful serving of many those erudite pronouncements. Without seeking to diminish the diligence of their research and the breadth of their scholarship or to disregard the insight of the very many authorities presented, I have extracted assistance from some of these cases, in particular, the guidance of Sir Nicholas Browne-Wilkinson V-C in **Grant v Edwards and Edwards**²⁴.

[52] In **Grant**, his Lordship Sir Browne Wilkinson V-C categorised 3 matters that must be established²⁵ -

²² Ibid at para. 5

²³ Ibid at para. 56 per Baroness Hale of Richmond

²⁴ [1987] 1 FLR 87

²⁵ Ibid at 97. His Lordship's 3 categories or sections as he called them emerged from his dissection and application of the reasoning of Lord Diplock in *Gissing v Gissing*

- (1) The nature of the substantive right;
- (2) The proof of the existence of that right; and
- {3) The quantification of the right

[53] His Lordship then expanded on the factors to be considered when making a determination on each category –

1. THE NATURE OF THE SUBSTANTIVE RIGHT (p. 9058-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.

2. THE PROOF OF THE COMMON INTENTION

(a) Direct evidence (p. 905H):

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 p. 907C and p. 908C.

(b) Inferred common intention (pp. 906A-908D)

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 instalments or general housekeeping expenses. In this section of the speech, he analyses 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 way such contributions are essential to establish the trust.

3. THE QUANTIFICATION OF THE RIGHT (pp. 9080-909)

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.

If this analysis is correct, contributions made by the claimant may be relevant for four different purposes, viz.:

(1) In the absence of direct evidence of intention, as evidence from which the parties' intentions can be inferred.

(2) As corroboration of direct evidence of intention.

(3) To show that the claimant has acted to his or her detriment in reliance on the common intention. Lord Diplock's speech does not deal directly with the nature of the detriment to be shown.

(4) To quantify the extent of the beneficial interest.

[54] The first question therefore to be confronted is whether Ms. Halley has discharged the burden of proving that while the legal title is solely in Mr. Smith's name, there exists a common intent that she should share a beneficial interest in the same and that she acted to her detriment in reliance on that common intent. In considering this question, I keep in mind that like in **Grant**, this is case where there is no evidence of a *'written declaration or agreement, nor any direct provision ... of part of the purchase price so as to give rise to a resulting trust.'*²⁶ Nourse LJ in **Grant** advised that the claimant in such cases will have to show that *'there was a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property.'*²⁷

[55] Ms. Halley says even though there is no written declaration or agreement, this case is a paradigm example of what is referred to by Nourse LJ in **Grant** as the *'rarer class of case... where, although there has been no writing, the parties have orally declared themselves in such a way as to make their common intention plain.'*²⁸ Or as Lord Bridge pointed out that the *'mere agreement between the parties that both are to have beneficial interests is sufficient to prove the necessary common intention.'* Or as in **Lloyds Bank v Rosset**²⁹ Lord Bridge of Harwich categorised cases of this sort into 2 categories. His Lordship explained that-

The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this

²⁶ Grant v Edwards [1987] 1FLR 87 per Nourse U at 93

²⁷ *ibid*

²⁸ *ibid*

²⁹ [1990] 1ALLER 1111 at pages 1118 to 1119

sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel.

In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to each such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do.

[56] As a matter of completeness, in respect of Lord Bridge's caution that he was doubtful that anything less than direct contributions to the purchase price by the partner who is not the legal owner would suffice to prove beneficial ownership in the instance of the second category, comment has been made on this observation both in **Stack v Dowden** and in the Privy Council in **Abbott v Abbott**³⁰. In **Abbott**, Baroness Hale of Richmond made reference to Lord Walker of Gestingthorpe's dictum in **Stack v Dowden** to the effect that –

³⁰ (2007) UKPC 53 at paras. 5 and 6

Lord Walker also commented upon the passages from the speech of Lord Bridge of Harwich in Lloyd's Bank plc v Rosset [1991] 1 AC 107, [1990] 1 All ER 1111, [1990] 2 WLR 867 quoted in para 3 above. Lord Walker pointed out, at para 25, that although Lord Bridge had drawn a sharp contrast between cases in which there had been some prior agreement to share and those where there had not, he and all the other members of the House were "unanimously, if unostentatiously, agreeing that a 'common intention' trust could be inferred even when there was no evidence of an actual agreement. Lord Walker went on to comment, in para 26:

Lord Bridge's extreme doubt 'whether anything less will do' was certainly consistent with many first-instance and Court of Appeal decisions, but I respectfully doubt whether it took full account of the views (conflicting though they were) expressed in Gissing v Gissing (see especially Lord Reid [1971] AC 886 at pp 896G-897B and Lord Diplock at p 9090-H). It has attracted some trenchant criticism from scholars as potentially productive of injustice (see Gray & Gray, Elements of Land Law, 4th ed [(2005)], paras 10.132 to 10.137, the last paragraph being headed 'A More Optimistic Future?'. Whether or not Lord Bridge's observation was justified in 1990, in my opinion the law has moved on, and your Lordships should move it a little more in the same direction

[6] Lord Walker, Lord Hoffmann and Lord Hope of Craighead all agreed with my own opinion, in which I summed the matter up thus at para 60:

The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.

The House also approved a passage from the Law Commission's discussion paper on Sharing Homes (2002, Law Com No 278, para 4.27): If the question really is one of the parties' 'common intention', we believe that there is much to be said for adopting what has been called a 'holistic approach' to quantification, undertaking a survey of the whole course of

dealing between the parties and taking account of all conduct which throws light on the question what shares were intended.

Has Ms. Halley discharged the burden?

[57] What then is the evidence proffered by Ms. Halley that her case falls within what I may loosely refer to as Lord Bridge's first category or Nourse LJ's classification of the '*rarer class of case*' or the mere agreement of the parties that serves as direct evidence of the common intention per the terminology of Sir Nicholas Browne – *Wilkinson V-C?* At paragraph 6 of her witness statement Ms. Halley testifies that-

The Claimant and I were in love and it was always intended that we would marry and build a family together. We both intended to have children and build a home together, which would be our matrimonial home. This was always the intention and up until his marriage to another party in 2016, the Claimant had never expressed otherwise.

[58] At paragraph 7 Ms. Halley says-

With this new fortune as a West Indies Cricketer, the Claimant and I were able to construct our intended matrimonial home at La Taste...

[59] At paragraph 11, Ms. Halley states-

I was not "invited" to live [in] the subject home. The said house was always the intended matrimonial home... We shared it as our matrimonial home ...

[60] Regarding the foregoing testimony, counsel for Ms. Halley submits at paragraph 36 of the submissions³¹ that-

³¹ Claimant's submissions filed on 14¹ January 2019

The unchallenged evidence of Naureen John, wherein she stated at page 89 par 4 of the trial bundle that the Claimant and Ms. Halley intended to get married and build a house together, he constantly expressed his desire to build a house together... All the evidence is corroborated and finds support with the Claimant's witness in particular, Ronald Fletcher who said he was asked by the Claimant to be the 'best man' at his wedding ...

[61] Counsel for Ms. Halley also stated that she-

indicated both in her evidence in chief and cross examination that the Claimant always said that the house is theirs and it is their family home. The bed was carved with their names at the Claimant's request, their child is buried on the said property, she paid bills, took care of the children and she was the home maker. They shared all the bills, they used each other's credit cards...³²

[62] Having reviewed the cases in support of the position taken by Ms. Halley, I am of the view that she has not discharged the burden of showing what Sir Nicholas Browne referred to as the direct evidence of the common intention or what Nourse LJ referred to as the rarer class of cases in which either the claimant was led to believe that they had a share even though their name was not added to the title. **Eves v Eves** is one such case where the husband led the wife to believe that her name was excised from the title but for the fact that she was underage. It was later revealed in the proceedings that this was a ruse by the husband to keep the wife's name off of the title. Her acts subsequent to the promise were found to have been performed in furtherance of the intention to grant her a share. Similarly, in **Grant** itself, the wife was told that while it was intended for her to have a share in the property, her name would not be placed on the title as such an act may prejudice

³² Ibid

her in matrimonial proceedings between her and her husband. It turns out that the husband never intended to place the wife's name on the title. Her acts subsequent to the promise were found to be performed in furtherance of the intention that she was to obtain a share in the property.

[63] There is no such evidence before this court. Indeed there is no evidence of the sort found sufficient in **Midland Bank pic v Dobson and Dobson**³³ where there was clear proof of a commonality of minds that the house was 'our house' and a 'principle of sharing' everything that led the court to the irresistible conclusion as to the common intention. At the highest the evidence in this case demonstrates that prior to the demise of the relationship and during happier times the parties did plan a life together. There was no doubt in either party's mind that they intended to marry, start a family and live as such in the subject property. Much was made in Ms. Halley's evidence and on the cross examination of Mr. Smith and his witnesses about the living arrangements at Ms. Halley's parents' house, Mr. Smith's engagement to Ms. Halley, the promises to marry her, the construction of the home and the purchase of adjoining lands, the furnishing of the home and repairs and maintenance of the same. But nothing was presented by Ms. Halley or her witnesses or extracted from Mr. Smith or the witnesses for Mr. Smith to show that the parties ever had an agreement, arrangement or understanding that Ms. Halley was to share a beneficial interest in the property. As Lord Bridge of Harwich commented in **Lloyds' Bank v Rosset and another**³⁴,

•.neither a common intention by spouses that a house is to be renovated as a Joint venture' nor a common intention that the house is to be shared by parents and children as the family home throws any light on their intentions with respect to the beneficial ownership of the property.

³³ [1986]1FLR 171

³⁴ [1990]1ALLER 1111at page1116

Inferred common intention

[64] Lord Bridge of Harwich's second category of cases delineated those instances where the court can find *'no evidence to support a finding of an agreement or arrangement to share...'*³⁵. In these cases, his Lordship advised that *'the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and the conduct relied on to give rise to a constructive trust.'*³⁶ His Lordship's doubt that anything less than direct contributions to the purchase price or the mortgage instalments by the person who claims a beneficial interest has already been addressed above. This court is required to look at the whole course of dealings of the parties to see if the requisite intent can be inferred. In this regard, Sir Nicholas Browne – Wilkinson spoke of both direct and indirect contributions by the claimant spouse as evidence from which a common intention can be inferred in the absence of direct evidence of an agreement, understanding or an arrangement as to a common intention to share the beneficial interest in the property. Indeed I am guided by the many pronouncements throughout the cases that contributions beyond direct financial contributions may in appropriate cases indicate the requisite common intent.

[65] A useful synopsis of the approach that should be adopted since the clarification of the law in **Pettit** and **Gissing** is stated by Lord MacDermott CJ in **MacFarlane v MacFarlane**³⁷

These decisions, as I understand them, have also established or affirmed two rather less negative propositions of law to which I must now refer. The first is that, in the absence of proof to the contrary, a spouse who has acquired the legal title to property purchased with the aid of a substantial monetary contribution from the other spouse will hold the property subject

³⁵ Ibid at page 1118

³⁶ Ibid

³⁷ [1972] NI 59 at pages. 66-77

to a beneficial interest therein belonging to the other spouse: see Pettitt, per Lord Reid at p. 7948, per Lord Hodson at p. 810G, per Lord Upjohn at p. 815 G-H; and Gissing per Lord Pearson at p. 264G-2658. This may be the result of some binding agreement between the spouses; but more usually it will flow from a resulting trust in favour of the contributing spouse who has not the legal title. The extent of the beneficial interests will depend on the circumstances. They will not necessarily be equal, but may be held so where that conclusion accords with the broad merits of the respective claims or with what is fair and reasonable when there is some difficulty or uncertainty in assessing the contributions: see Rimmer v. Rimmer [1953] 1 Q.B. 63.

The second proposition which I take to be now accepted in Pettitt and Gissing must be stated in a qualified form. It is that in certain circumstances the first proposition can also apply in favour of the spouse without the legal title where that spouse has contributed to the purchase, not directly by finding a part of the price, but indirectly and in a manner which has added to the resources out of which the property has been acquired as, for example, by work done or services rendered or by relieving the other spouse of some, at any rate, of his or her financial obligations.

[66] In **Oxley v Hiscock**³⁸, Chadwick LJ spoke of the recognition in earlier cases including **Pettit** and **Gissing** that 'a common intention at the time of purchase, sufficient to give rise to a constructive trust, might be inferred from conduct other than the making of financial contributions.'

[67] In **Oxley v Hiscock**, Chadwick LJ also observed in reference to Lord Bridge's dual categorisation in **Lloyd's Bank v Rosset** -

³⁸ [2004] 3 ALLER 703 at para. 28

*a case will not fall within the first class unless there is evidence of some agreement, arrangement or understanding, usually prior to acquisition, that each party should have some beneficial interest in the property; but it is not necessary that that agreement, arrangement or understanding extends to defining the extent of the respective shares. If a case does not fall within the first class it may, nevertheless, fall within the second class if common intention can be inferred from conduct; and direct contributions to the purchase price will be conduct from which such common intention can readily be inferred. But the relevant common intention is that each party should have some beneficial interest"*³⁹

- [68] In **Stack v Dowden**, Baroness Hale of Richmond, again speaking of the cases in which the property has been registered in joint names, made the following observation which may, in some respects, offer assistance as to the sort of evidence that may suffice in this instance –

Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who

³⁹ *ibid* at para. 40

pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natura/love and affection.⁴⁰

[69] I would say immediately that this is not a case where evidence has emerged that Ms. Halley made a direct contribution to the purchase price of the land or after purchase of the land and construction of the house thereon, that she paid any part of the mortgage instalments. The land was purchased by Mr. Smith and the house was constructed out of moneys either raised by Mr. Smith personally or via a mortgage that was repaid solely by him. There is some dispute as to financial assistance given to Mr. Smith by Ms. Halley's father but this will be addressed below.

Has there been indirect contribution?

[70] So what sort of indirect contribution has been indicated by Ms. Halley? In this case, Ms. Halley lists her contributions as both financial and non-financial. At the risk of repetitiveness I repeat them both. In terms of financial contribution she said the following –

During the time of my employment, I purchased ... from my own funds: furniture, wares, pots, a washing machine, curtains and other decorations

⁴⁰ [2007] UKHL 17 at para. 69

and equipment for the gym. I also paid the telephone, internet and cable bills from 2009 to 2012.

Additionally, the claimant and I travelled to New York to purchase furniture and furnishings ... I made most of the decorative decisions for the house including the lighting fixtures, paint and tiles; the decorating of the subject house was mainly executed by the Second Defendant, Naureen John and me⁴¹

[71] In terms of non-financial contributions, Ms. Halley relies on the said the following-

My non – financial contributions include but are not limited to the care of the children of the family (living and deceased) and domestic duties such as cooking, cleaning, washing and the upkeep of the yard and surroundings. I have been a loyal, loving and supportive partner to the Claimant as well as a loving, committed mother to their [sic] children. I take care of the Claimant and sees [sic] to his every need. The Claimant is seldom home and I tends [sic] to his affairs and the affairs of the subject property in his absence and even when he is present at home⁴².

[72] My view is that this evidence does not rise to the threshold necessary to show that there was a common intention that Ms. Halley was to share a beneficial interest in the property. As was noted in the cases, the court has to draw inferences from the conduct of the parties that is consistent with an intention that the party who is not the registered owner should share a beneficial interest in the property. Indeed in *Pettitt* itself their Lordships rejected an argument that the work executed on the property by the husband had improved its value and had thereby demonstrated the requisite intent that he share a beneficial interest in the property. Lord Reid said in that case,

⁴¹ *Supra*, note 1

⁴² *Supra* note 1 at para. 28

I agree with the view of Lord Denning MR expressed in Button v Button. He said with regard to the husband ([1968] 1 AllER at p 1066; [1968] 1 WLR at p 461) "He should not be entitled to a share in the house simply by doing the 'do-it-yourself jobs' which husbands often do; and with regard to the wife ([1968] 1 AllER at p 1067; [1968] 1 WLR at p 462): "The wife does not get a share in the house simply because she cleans the walls or works in the garden or helps her husband with the painting and decorating. Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interests in, the property.⁴³

[73] Similarly in this case, I do not find that the acts of assisting with the furnishing and decorating of the home, whether through buying some of the furniture (by loan or cash) or decorating it, leads me to conclude that it was intended that Ms. Halley should share a beneficial interest in the home. Much was also made of the time spent taking care of the home, the children and in particular the sick child. My comments are not meant to diminish, in any way, the tremendous responsibility placed on Ms. Halley in this regard. Mr. Smith was mostly away from the home plying his chosen trade. There was much to be done for this young family including the care of two sick children one of whom eventually died. The tasks performed by Ms. Halley cannot be valued or deemed a walk in the park. However, none of the acts claimed by her suggests that the parties intended that there was to be beneficial sharing of the property. The case law indicates that the court's role is not to do what seems right or fair in the circumstances. The task of the court is to examine the evidence to reveal or uncover what was intended by the parties themselves. It must not ascribe, attribute, assign or impute an intention based on its assessment of what seems fair or "just" in the circumstances. In this part of my analysis I also include the references made to the joint sharing of a bank account.

⁴³ (1969)2 AllER 385 at page 391

I do not find that any of the evidence presented on the financial and non-financial contributions demonstrate the common intent being pursued in this case. In **Gissing**, Viscount Dilhorne made the following observation,

My Lords, in determining whether or not there was such a common intention, regard can of course be had to the conduct of the parties. If the wife provided part of the purchase price of the house, either initially or subsequently by paying or sharing in the mortgage payments, the inference may well arise that it was the common intention that she should have an interest in the house.

To establish this intention there must be some evidence which points to its existence. It would not, for instance, suffice if the wife just made a mortgage payment while her husband was abroad. Payment for a lawn and provision of some furniture and equipment for the house does not of itself point to the conclusion that there was such an intention.

[1971] A.C. 886 Page 901

I appreciate that there may be very great difficulty in establishing such an intention where the dispute is between former spouses but that does not alter the question to be decided. In every case it has to be established that the circumstances are such that there is a resulting, implied or constructive trust in favour of the claimant to a beneficial interest or a share in it. In the case of former spouses that will ordinarily depend on whether it can be inferred from the evidence that there was such a common intention.

My Lords, I do not think that any useful purpose will be served by my expressing any views on what will suffice to justify the drawing of such an inference. In one case the evidence may just fall short of doing so; in another it may just suffice. But what is important is that it should be borne

in mind that proof of expenditure for the benefit of the family by one spouse will not of itself suffice to show any such common intention as to the ownership of the matrimonial home.

It may be regarded as unsatisfactory that one claim will fail for lack of evidence from which such an intention can be inferred and another similar claim where there is slightly more evidence succeed. But that can happen in all kinds of cases and the fact that it can happen in this class of case does not lead me to the conclusion that the state of the law with regard to the determination of rights to property is unsatisfactory.⁴⁴

- [74] There is a significant point made by Lord Diplock in **Gissing** that made by of assistance in this case. He made the following interesting comment-

Where the wife has made no initial contribution to the cash deposit and legal charges and no direct contribution to the mortgage installments nor any adjustment to her contribution to other expenses of the household which it can be inferred was referable to the acquisition of the house, there is in the absence of evidence of an express agreement between the parties no material to justify the court in inferring that it was the common intention of the parties that she should have any beneficial interest in a matrimonial home conveyed into the sole name of the husband, merely because she continued to contribute out of her own earnings or private income to other expenses of the household. For such conduct is no less consistent with a common intention to share the day-to-day expenses of the household, while each spouse retains a separate interest in capital assets acquired with their own moneys or obtained by inheritance or gift. There is nothing here to rebut the prima facie inference that a purchaser of land who pays the purchase price and takes a conveyance and grants a

⁴⁴ [1970] 2 ALL ER 780 at page 786

*mortgage in his own name intends to acquire the sole beneficial interest as well as the legal estate: and the difficult question of the quantum of the wife's share does not arise*⁴⁵

[75] These words are apposite to this case where there is -

- (1) no express agreement;
- (2) no financial contribution to the price of acquisition or mortgage instalments;
- (3) some adjustments thereafter to the other expenses. In this latter regard, I repeat my finding that the furnishing of the home, decorating the same and taking care of the children do not indicate that Ms. Halley was intended to share in a beneficial ownership of the house.

[76] As was found in **Gissing**,

*The court is not entitled to infer a common intention to this effect from the mere fact that she provided chattels for joint use in the new matrimonial home; and there is nothing else in the conduct of the parties at the time of the purchase or thereafter which supports such an inference. There is no suggestion that the wife's efforts or her earnings made it possible for the husband to raise the initial loan or the mortgage or that her relieving her husband from the expense of buying clothing for herself and for their son was undertaken in order to enable him the better to meet the mortgage installments or to repay the loan.*⁴⁶

[77] Similarly in this case, I cannot infer a common intention that Ms. Halley's contribution to some of the furnishing, decorating, taking care of the home and some of its expenses made it possible for Mr. Smith to raise the initial sums required to acquire or to later to develop or to assist him in a non-financial manner

⁴⁵ [1970] 2 ALLER 780 at page 793

⁴⁶ [1970] 2 ALLER 780 at page 794

to repay the mortgage. As Nourse LJ helpfully suggested in **Grant**, the conduct sought to be relied on to show either the common intent or reliance thereon 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 14lb sledge-hammer in the front garden'*⁴⁷. Sir Nicholas Browne Wilkinson VC remarked that *'Setting up house together, having a baby, making payments to general housekeeping expenses (not strictly necessary to enable the mortgage to be paid) may all be referable to the mutual love and affection of the parties and not specifically referable to the claimant's belief that she has an interest in the house.'*⁴⁸

[78] So while it is clear that these 2 young people loved each other at some point and were willing to do what was necessary to build a life together, the acts and conduct relied on in this case do not indicate that they either contemplated an arrangement where interest in the house would be shared or that either of them acted in such a manner. In **Grant** itself, it was found that the -

very substantial contribution which the plaintiff made out of her earnings after August 1972 to the housekeeping and to the feeding and to the bringing-up of the children enabled the defendant to keep down the instalments payable under both mortgages out of his own income and, moreover, that he could not have done that if he had had to bear the whole of the other expenses as well. For example, in 1973, when he and the plaintiff were earning about £1,200 each, the defendant had to find a total of about £643 between the two mortgages. I do not see how he would have been able to do that had it not been for the plaintiff's very substantial contribution to the other expenses. There is certainly no evidence that there was any money to spare on either side and the natural

⁴⁷ (1987) 1 F.L.R. 87 at page 95

⁴⁸ *ibid*

inference is to the contrary. In this connection, it is interesting to note that when dealing with the moneys in the Leeds Permanent Building Society account the judge said this:

'They lived from hand to mouth, as I see it. They put their money in, and when there was some money to spare, they would share it out in this way.'

In the circumstances, it seems that it may properly be inferred that the plaintiff did make substantial indirect contributions to the instalments payable under both mortgages.⁴⁹

What about the contributions by the father and brother?

[79] What about the asserted contributions made by the father and brother? Do these offer any assistance in ascertaining a common intention that there was to be shared beneficial interest? I must equally answer this question in the negative. I do not believe that I am tasked with resolving the dispute as to whether Mr. Douglas, Ms. Halley's father paid for the piece of land encroached on by Mr. Smith. I have not been persuaded one way or the other about this. For Mr. Douglas side, a cheque stub was shown that he paid Mr. Robertson what is asserted to be all or part of the price for the adjoining piece of land. Mr. Smith presented a receipt in his name and claims that the moneys for the adjoining and were given to Mr. Douglas to pay to Mr. Robertson out of his account. It may be the case that Mr. Smith owes Mr. Douglas the money paid to Mr. Robertson on his behalf if it can be so proven, but none of this disputation and argumentation lends any aid to resolving the extant question confronting this court. Nothing was presented to link any of this conduct by Mr. Douglas to the question of his daughter having a share in the house. He quite properly and decently asserts in his evidence that he did it all to assist his daughter. It was his contribution to her future. But it has not been shown on a balance of probability or at all, that this was referable to Ms. Halley having a share in the beneficial interest in the house.

⁴⁹ [187]1FLR 87 at pages 95-96

[80]A similar posture has to be adopted with respect to the cost reductions on the construction to the home granted by Mr. Douglas to Mr. Smith. There is simply no evidence that any of this meant that his daughter was to share in the beneficial interest in the house. Frankly, I would imagine that, at its highest, the reductions in building costs amounted to the sort of assistance a father who is engaged in the construction industry may offer to these young people who were to commence a life together. Based on the learning recited on the inference that I am enjoined to draw in this case, I do not find that I can draw an inference that the deductions in constructions costs suggest that there was a common intention between the parties that Ms. Halley was to share a beneficial interest in the house.

[81]The same position applies to the acts performed by the brother which I have set out above. There was nothing presented on the evidence to demonstrate that any of the acts of the brother were referable to a common intention that Ms. Halley was intended to share a beneficial interest in the property.

[82] All in all therefore the claim for Ms. Halley fails at the first hurdle as to whether there was a common intention that she and Mr. Smith were to share a beneficial interest in the home.

Ms. John's claim

[83]What about the claim brought by Ms. John? In her claim she asserts that she was asked to come to the house to assist Mr. Smith since 2013. At the house she assisted with the children, cooking, cleaning and washing. Barrels of food were sent to the house by her aunt at least three (3) times per year. In her witness statement she testified that she went on shopping trips with Ms. Halley and Mr. Smith to obtain furnishings for the house. She spent every Christmas with the family. Mr. Smith even showed her a room of her own. She was handed a set of keys to the premises. She served as a live in housekeeper and took care of Mr. Smith's friends, his pets and personal errands when he was in the country. She

says that she is entitled to compensation for these acts in accordance with the Minimum Wages Ordinance No.30 of 2011.

[84] Unsurprising, Mr. Smith refutes the claim brought by Ms. John. He says that he has no contractual relationship with Ms. John. In his evidence he maintains that Ms. John was invited to live on the premises during a period of her personal difficulties. He never had any arrangement or agreement with her to be paid for any services rendered or for her to have a share in his property.

[85] In written submissions, counsel for Ms. John submits that '*despite offering her services gratuitously and was not willing to accept any money, does not negate the promise of the claimant to pay her for her services.*' I am not sure how to assist Ms. John here. It is her claim that she had an agreement with Mr. Smith. I do not need to recite legal authority for the proposition that it is indeed for Ms. John to set out the terms of the agreement, the particulars of the breach of the alleged agreement and the requisite remedy (ies) in law. Nothing of that sort has been presented on this claim. As such the claim for Ms. John fails.

Conclusion

[86] The conclusion of this claim is therefore that-

- (1) Mr. Smith is successful on his request for an order for possession of the premises at La Taste, St. Patrick, Grenada. I observe that he has claimed for mesne profits but the claim proceeded as one for possession only since no particulars of a claim or evidence for mesne profits was ever presented. No mesne profits are therefore awarded. I am informed that Ms. Halley has ceased occupying the premises and as such this order of the court is declaratory of Mr. Smith's right to possession and occupation of the house;
- (2) Ms. Halley and Ms. John are both unsuccessful on their counterclaims; and

(3) In respect of costs, the court awards costs of \$1,500.00 to Mr. Smith.

[87] I thank both parties for their assistance and patience in awaiting the outcome of this claim.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar