

THE EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2007/0255

BETWEEN:

AVA MC CLEAN

CLAIMANT

AND

MICKELL ROHAN CATO

DEFENDANT

**Appearances:**

Ms. Ashelle Morgan for the claimant.

Mrs. Roxanne Williams for the defendant.

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2019: Jun. 20  
Jul. 25  
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**JUDGMENT**

**INTRODUCTION**

[1] **Henry, J.:** Ms. Ava Mc Clean is a Jamaican national. Mr. Mickell Cato is Vincentian. They struck up a romantic relationship in or about 1999 while they were both employed aboard a ship operated by the Disney Magic Cruise line. Ms. Mc Lean alleged that at that time they both agreed to jointly purchase land in Saint Vincent and the Grenadines and that Mr. Cato would secure a loan to do so in his sole name from a financial institution in his home country. She claimed that Mr. Cato obtained a loan to pay for the land and that she gave him US\$15,000.00 (the equivalent of EC\$40,200.00) to repay the loan. Mr. Cato denied that any of this happened.

[2] Ms. Mc Lean contended that it was agreed that her name would have been placed on the Deed.

She averred that Mr. Cato failed to place her name on the deed and refused to repay her the monies. Their relationship has come to an end. Ms. Mc Lean contended that Mr. Cato holds the monies in a constructive trust for her. She filed this claim seeking the return of the money with interest. Alternatively, she also sought a declaration that she has an interest in the subject land and an injunction to restrain Mr. Cato from dealing with the land as if he is the sole owner.

[3] Mr. Cato averred that Ms. McLean is disgruntled that their relationship has ended. He claimed that she has pleaded with him to resume their romance. He contended that her allegations that she gave him money are retaliatory in nature. He relied on the doctrine of *laches* or unconscionable delay. Determination of the issues between the parties rested largely on the court's assessment of their credibility. I have found that Mr. Cato is liable to Ms. Mc Lean.

## ISSUES

[4] The issues are whether:

1. Mickell Cato received the referenced monies from Ava Mc Lean and holds them in a constructive trust for her?
2. Whether Mr. Cato can avail himself of the defence of *laches*?
3. To what remedies (if any) is Ava Mc Lean entitled?

## ANALYSIS

**Issue 1 – Did Mickell Cato receive the referenced monies from Ava Mc Lean and now holds them in trust for her?**

[5] There were only three witnesses in this case - Ms. Mc Lean, Mr. Cato and Mr. Don Reid. Mr. Reid described himself as the parties' mutual friend. He worked aboard the same Disney cruise ship as Ms. McLean and Mr. Cato. Ms. Mc Lean testified that she was employed as a cabin steward in late 1999 and was earning US\$4000.00 per month. She said that Mr. Cato was employed on the same ship as a houseboy. She recalled that as their relationship deepened they spoke about getting married and settling down.

[6] She met Mr. Cato's uncle Michael Slater who was also an employee on that vessel and shared a cabin with him. She remembered that Mr. Slater told them that he had bought a parcel of land at Questelles, Saint Vincent and the Grenadines and that a neighbouring plot of land was available

for sale. She said that he encouraged them to buy it. Her recollection is that she and Mr. Cato discussed it and agreed to buy it. She explained that he told her that because she was Jamaican it would be easier for him to secure a mortgage if he made the application in his sole name. She testified that they agreed to take that course of action on the understanding that they would both service the loan.

[7] Ms. McLean said that when Mr. Cato went to Saint Vincent in 2002 she gave him US\$2000.00 as a deposit towards the mortgage. She stated that when he returned he told her that he was successful and that he had left his aunt Lesa Mckie in charge of everything. She claimed that he told her that the mortgage was for about US\$15,000.00, but they might end up paying about US\$18,000.00 if they did not pay it quickly. She said that he told her that her name was on the deed. She stated that she was led to believe that they jointly owned the land. She explained that she did not ask to see a copy of the deed because she trusted him. Ms. McLean stated that while they were aboard the ship she gave Mr. Cato additional amounts of US\$700.00, US\$1200.00, US\$800.00 and US\$1000.00. He denied that this happened.

[8] Mr. Cato was adamant that he never considered marrying Ms. Mc Lean. He insisted that he never discussed such possibility with her or anything about settling down with her in Saint Vincent or elsewhere. He said that he visited Saint Vincent in 2002 and obtained a loan to purchase the subject land. He admitted that it was next to a lot which his uncle had purchased. He produced Deed of Conveyance No. 2228 of 2002 and Deed of Mortgage 2229 of 2002 which contained the details of the respective transactions. Ms. Mc Lean is not named in either. Mr. Cato is recorded as the sole transferor and mortgagor.

[9] He insisted that Ms. Mc Lean had no knowledge about the purchase of the land or the mortgage until after he returned from Saint Vincent. He said that he had no discussions with her regarding purchasing land or getting a mortgage or anything about who would be responsible for paying the loan. He averred that he told her about the property only when he returned to the ship. He denied having any conversation with Ms. Mc Lean which could lead her to believe that she would have an interest in, share or portion of the land, or that she would be so entitled. Mr. Cato maintained that

Ms. Mc Lean never gave him any monies to repay the mortgage and that she did not contribute in any way to its repayment. He asserted that he saved his money over a period of time and remitted the payments to his agent Lesa Mc Kie to service the mortgage.

[10] He stated that Ms. Mc Lean had returned to Jamaica in 2002 having quit her job. He testified that although they continued a long distance relationship for some time it was not working for him. He said that he ended the relationship in 2004 or early 2005. He insisted that any monies or other gifts exchanged between them during their relationship were given in the normal course of the relationship and were absolute gifts to each other. Ms. McLean accepted that they had exchanged gifts from time to time but insisted that the transaction with the subject land was different. She denied that the amounts she gave Mr. Cato and now claims were gifts. She testified that if she had known that her name was not on the deed she would not have given him the money.

[11] Ms. Mc Lean stated that in 2003 she and Mr. Cato accepted an invitation from their friend Don Reid to his wedding in Trinidad and Tobago. She met Mr. Cato's mother Greta Lewis on that trip to Trinidad and visited her home several times. She claimed that before she left Trinidad, she gave Mr. Cato US\$1300.00 to pay towards the mortgage.

[12] Ms. Mc Lean explained that she lent Mr. Reid US\$6000.00 to assist with wedding expenses. She stated that she arranged for him to return US\$5000.00 of that amount to Mr. Cato on her behalf, because she would no longer be working on the ship when he resumed duties. She said that she told Mr. Cato to collect the US\$5000.00 from Mr. Reid and pay it towards the mortgage. She recounted that a few months later Mr. Cato told her that Mr. Reid had repaid the money.

[13] Mr. Don Reid testified that he, Mr. Cato and Ms. Mc Lean related to one another like brother and sister. He said that they socialized regularly on the ship and would visit one another's cabins. He stated that Mr. Cato and Ms. McLean had intentions to get married and purchase property in Saint Vincent. He recalled that they spoke about Questelles and another place and about building a house in Saint Vincent.

[14] Mr. Reid testified that in 2003 Mr. Cato and Ms. Mc Lean attended his wedding in Trinidad as a

couple. He said that Ms. McLean let him US\$6000.00 in two installments of first US\$1000.00 and then US\$5000.00. He explained that Ms. Mc Lean told him to give the money to Mr. Cato when he returned, so that he could pay it towards their property.

[15] He recalled paying Mr. Cato the US\$5000.00 as instructed by Ms. Mc Lean and subsequently returning the remaining US\$1000.00 to Ms. Mc Lean. Mr. Reid said that he accumulated the \$US5000.00 over about 2 months. He testified that he gave it to Mr. Cato, who counted it in his presence and in the presence of his (Reid's) roommate. For his part, Mr. Cato said that he just placed the money in his bag without counting it. He also insisted that Ms. Mc Lean told him to take the money go home and have a good time.

[16] Mr. Cato submitted that Mr. Reid was a witness of convenience and testified as a favour to Ms. Mc Lean, in gratitude to her for the loan of US\$6,000.00 that she had made to him. When this was suggested to Mr. Reid, he rejected that notion and retorted that he had already repaid his debt to her when he returned her money. Mr. Cato argued that even if the court finds that Mr. Reid gave him money on Ms. Mc Lean's behalf, it must find that it does not know for what the money was intended because he and Ms. Mc Lean were in a relationship in which gifts were exchanged between them.

[17] Mr. Reid gave his account in a forthright, calm and collected manner. He stated that he still considered Mr. Cato and Ms. Mc Lean to be his friends even though he was pitted one against the other in the court. He insisted that he was telling the truth. I believe him. His testimony was credible and had the ring of truth to it. His description of the type of relationship he had with Mr. Cato and Ms. Mc Lean was not controverted in cross-examination. That he considered both parties to be his friends even though he was caught between them in this dispute speaks volumes about his character. I accept his account. It corroborates much of Ms. Mc Lean's in material respects and bolsters her claim against Mr. Cato.

[18] Ms. Mc Lean indicated that in or about March 2004 she purchased an airline ticket for Mr. Cato to visit her in Jamaica. She said that she withdrew US\$3000.00 from her bank account and gave him

to pay towards the mortgage. She produced a copy of a bank statement<sup>1</sup> in support of that contention. It contains details of a banking withdrawal of US\$3000.00 from an account as alleged.

[19] Ms. Mc Lean stated that she ended the relationship with Mr. Cato in 2006. She testified that she visited Saint Vincent in August that year and stayed with Mr. Cato's mother. She explained that she went to see the subject land. She indicated that she discovered that her name was not on the deed. She said that she confronted Mr. Cato about why her name was on the deed and he did not respond. She sought legal advice from the law firm of Williams and Williams and had her lawyer write to Mr. Cato. She produced a copy of a letter addressed to Mr. Cato from the law firm.

[20] In it, the lawyers wrote that Ms. Mc Lean asserted that she had made a substantial contribution towards repayment of the mortgage. They demanded that her name be placed on the deed or that she be repaid the sums she paid towards the loan. They threatened legal action if Mr. Cato did not comply. Ms. McLean said that she could not recall then how much money she had given to Mr. Cato so she told her lawyer it was at least US\$12,000.00. The only figure referenced in the letter is \$42,000.00, which was described as the purchase price of the subject land. The letter is dated 29<sup>th</sup> August 2006.

[21] Ms. McLean said that she lost touch with Mr. Cato and had a chance encounter with him in Barbados in 2009 when the respective vessels on which they were employed docked there. She testified that when she confronted Mr. Cato he agreed to repay her the monies she had paid towards the land, but that he never did so. She recalled running into him again around November 2010 in Jamaica where once again he promised to repay her. She said that he did not keep his word.

[22] She stated that after making inquiries about when the ship was expected back in Jamaica, she made a report to the police. She said that on November 17<sup>th</sup> 2010, police officer Dave Harris accompanied her to the vessel when it was docked in Ocho Rios, Jamaica. She explained that Police Officer Harris boarded the ship and returned with Mr. Cato who admitted that he owed her.

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<sup>1</sup> 'AM2" at page 97 of the Trial Bundle filed on 26<sup>th</sup> September 2018.

She said that two other police officers were present when Mr. Cato made the admission and signed a promissory note admitting the debt and undertaking to repay her US\$15,000.00.

- [23] He testified that he was removed from the ship by a police officer who was dressed in full uniform and armed with a gun. He averred that the policeman took him to a vehicle which contained 3 other persons. He explained that Ms. Mc Lean and another woman were in the back seat with him. He stated that they started shouting and hurling accusations at him that he must repay Ms. Mc Lean. He said that he told them that he knew Ms. Mc Lean but denied owing her. He testified that the police officer with the gun gave him a piece of paper and told to sign it or he would not see his family again. He said that he then signed the paper.
- [24] Mr. Cato said that he signed the promissory note out of fear because he was threatened by the police officer who had a gun, and by other persons who were with him and Ms. Mc Lean. He raised the defence of undue influence. He contended that Ms. Mc Lean should not be permitted to rely on the promissory note.
- [25] Mr. Cato contradicted himself during cross-examination regarding the position of the people in the vehicle. He claimed that the woman was in the front seat. In his written submissions, he acknowledged that in his witness summary he stated that the police woman was in the back seat with him, while in his oral testimony he said that she was front seat. He submitted that this is not material in any way and should not negatively affect his evidence and credibility. He argued that his version is more credible in every respect. I do not agree.
- [26] Ms. Mc Lean was also a credible witness. She was at times confrontational under cross-examination but responded favourably and immediately to the court's entreaties to be less emotional in her responses. Mr. Cato was evasive at critical points in his testimony. I found him to be an unreliable witness. His insistence that he did not count the money given to him by Mr. Reid and assertion that Ms. Mc Lean gave him the money to go and enjoy himself is incredible. I reject those averments as being ludicrous and false. His oral and written accounts of the occasion on which the promissory note was signed were also marked by inconsistency.

[27] I accept that Mr. Cato and Ms. Mc Lean had a serious relationship which was ostensibly headed to marriage, albeit not in Mr. Cato's mind or heart. It is clear that while Mr. Cato was not serious about and had no intentions of marrying Ms. Mc Lean, she was fully committed to him, their relationship and prospects for a life together in Saint Vincent and the Grenadines. I reject Mr. Cato's insinuations that Ms. McLean fabricated this picture or future from thin air.

[28] I accept and find instead, on a balance of probabilities, that they had discussions about those matters; that they agreed to purchase the land in Saint Vincent and the Grenadines for the purposes of building a home there; that they agreed to obtain and service the mortgage as a couple; that they agreed that they would own the property jointly and that it would be registered in their joint names. Sadly, Mr. Cato was not sincere with Ms. Mc Lean.

[29] As for the legal issue before the court, I must decide whether the facts as found created a constructive trust in Ms. Mc Lean's favour. Ms. Mc Lean submitted that a constructive trust is created when a transaction for the acquisition of land by a trustee arises in circumstances where 'the trustee has so conducted himself that it would be inequitable to allow him to deny to the *cestui que trust* a beneficial interest' in such land. She argued that the trustee must have induced the *cestui que trust* to act to her detriment in the reasonable belief that by so acting she was acquiring a beneficial interest in the land. She relied on the case of **Gissing v Gissing**<sup>2</sup> as authority.

[30] Ms. Mc Lean contended that in order to prove that a constructive trust existed, she must show that there was a common intention that both would have a beneficial interest; and that she acted to her detriment on the basis of that common intention.<sup>3</sup> She argued further that financial contributions towards the acquisition of the property provide evidence from which the parties' intention can be inferred.

[31] She submitted that in the case of **Paul Webster v Lois Dunbar**<sup>4</sup> the court determined that the

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<sup>2</sup> [1970] 2 All ER 780, at p. 790 a.

<sup>3</sup> Grant v Edwards [1986] 2 All ER 426, at p. 437d.

<sup>4</sup> ANGHCVAP 2011/004.



respondent's financial contribution was direct evidence of the common intention that she was entitled to a beneficial interest in the property; and awarded her a 10% share based on her contribution. Ms. Mc Lean argued that similarly, she has made direct contributions towards the acquisition of the Questelles property, estimated at approximately USD \$15,000.00 or EC \$40,200.00 dollars.

[32] She submitted that regrettably she is unable to produce receipts for her contribution given the nature of the transactions; the money having mostly been issued in cash. She contended that notwithstanding, Mr. Cato acknowledged the debt by signing the promissory note and that at least USD \$8000.00 is corroborated. This is indeed the case.

[33] Ms. Mc Lean submitted that a common intention may be also be inferred by their conduct. She cited in support the judgment in **Grant v Edwards**<sup>5</sup>. In that case, the defendant told the claimant that the property was not acquired in their joint names because if that was done, she might have been prejudiced in her divorce proceedings. The court found that the defendant's statement showed that there was the necessary common intention to establish a beneficial interest.

[34] Ms. Mc Lean argued that Mr. Cato's representations to her are similar in nature. She submitted that the court must consider his statements to her that she would not be included in the mortgage because she was not a Vincentian. She reasoned that if there was no common intention that she would have an interest in the property, there would have been no need to give any such justification.

[35] Citing the case of **Cupid v Thomas**<sup>6</sup>, Mr. Cato countered that 'if a party to an informal relationship is unable to establish an express declaration of trust over property held in the name of the other party to the relationship, or a resulting trust arising by reason of payment of part of the purchase price for the property, she can only claim an interest in the property if she can show that the parties had a common intention that they should share the beneficial interest in it.'

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<sup>5</sup> [1986] 2 All E.R. 426.

<sup>6</sup> (1985) 36 WIR 182.

- [36] Mr. Cato contended that the court should find that when Ms. Mc Lean gave him the monies there was no intention that she would be entitled to a share in the disputed land and further that no resulting trust has arisen in her favour. He submitted that the cases of **Kerr v Baranow and Vanasse v Seguin**<sup>7</sup> are authorities for the proposition that ‘the common intention resulting trust had no further role to play in the resolution of domestic relationship cases ... (for) a number of reasons ... First, the common intention resulting trust was doctrinally sound and was inconsistent with the underlying principles of resulting trust law. Secondly, the notion of common intention ... could become a “mere vehicle or formula” for giving a party a share of an asset, divorced from any realistic assessment if the actual intention of the parties ... there was no need for any artificial enquiry into common intent.’
- [37] Ms. Mc Lean has made no claim based on a resulting trust. Accordingly, these principles of law do not apply. Mr. Cato made no further submissions on the matter of resulting, constructive or other trusts.
- [38] Mr. Cato argued that even if the court found that Ms. Mc Lean has an interest in the land that it should hold that it is inequitable to award her a share in it at this stage. He submitted that there was no common intention that her name be added to the deed. He argued that there is evidence that Ms. Mc Lean accosted his girlfriend in town. He submitted that hell hath no fury like a woman scorned. I make the observation that any alleged altercation between Ms. Mc Lean and Mr. Cato’s girlfriend are irrelevant to the issues in this case.
- [39] Mr. Cato submitted that Ms. Mc Lean’s belated request to be repaid the moneys ‘when things are not working out’ should be interpreted as demonstrating that there was no common intention for her to share the disputed property with him. He argued that from the evidence it is more likely that she became aggrieved after the relationship ended and now wishes that he adds her name to the deed or repay her the moneys she had given to him over the course of their romance.
- [40] He argued that it is curious that Ms. Mc Lean can remember so many years later the exact amounts of the sums she gave to him but not the approximate dates of those payments. He submitted that Ms. Mc Lean has correctly described herself as a generous person and the court

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<sup>7</sup> [2011] 3 LRC 184 (Canada).

should therefore find that she gave him the monies as gifts and not towards a loan. He submitted that the bank statement produced by Ms. Mc Lean may establish that she withdrew that amount but does not prove that she gave him that sum or that it was to be paid towards the loan. I agree with Mr. Cato on this score. I hasten to add that the existence of the documentary exhibits must be factored in to the entire scenario to arrive at the truth as to what took place.

[41] Mr. Cato submitted further that the amount being claimed by Ms. Cato is just \$1,800.00 short of the amount of the loan amount. He reasoned that she would reasonably have been expected to claim a far greater share of the land if her contention that they had a common intention to jointly share the land is to be believed.

[42] He argued that Ms. Mc. Lean's testimony that she does not want her name added to the deed is telling and should be accepted as proof that they had no intention for her name to be added to it. This argument albeit reasonable from Mr. Cato's perspective, ignores the reality that Ms. Mc Lean and he are no longer romantic partners as well as the probable practical quagmire joint ownership of the land as between them, would entail.

[43] Ms. Mc Lean submitted that detrimental conduct has been described as:

'... conduct on which the claimant could not reasonably have been expected to act unless he/she was to have an interest in the property.'<sup>8</sup>

She argued that her contributions are *prima facie* evidence that she acted to her detriment. She reasoned that it is highly unlikely that she would have considered purchasing land in Saint Vincent unless induced to do so by Mr. Cato. I will not speculate about this.

[44] Ms. Mc Lean submitted that USD\$15,000.00 is a substantial sum. She argued that is highly unlikely that as a person of limited means, she would have intended for her contributions to be regarded as mere gifts to Mr. Cato; or that she would have expended such a significant sum unless she had the belief that she was to acquire a proprietary or a beneficial interest in the Questelles' land.

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<sup>8</sup> Grant v Edwards, per Nourse LJ at p. 433b.

[45] She argued that her belief that she would acquire an interest in the property was reasonable given that: a) she provided a deposit of USD\$2000.00 on the purchase price; b) made a total contribution of at least USD\$15,000.00 or EC40,200.00 towards the purchase of the property; and c) Mr. Cato had represented to her that she was left out of the mortgage because she was not Vincentian and led her to believe that the property was jointly owned.

[46] Ms. Mc Lean concluded that there is sufficient evidence for the court to rule that there is a constructive trust. She submitted that Mr. Cato by his words and conduct induced her to act to her detriment in the belief that she was a joint owner of the Questelles land. She contended that it would therefore be inequitable to deny her a beneficial interest in the land.

[47] A constructive trust is described by the learned authors of Halsbury's Laws of England as attaching: '... by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust but which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property. Thus, some or all of the beneficial interest is subtracted from him.'<sup>9</sup>

[48] It arises in circumstances where there is no express written declaration of trust. The learned authors of Halsbury's Laws of England explain:

'Property subject to a constructive trust may have come into the hands of the alleged trustee as a result of unconscionable dealing or in breach of a fiduciary obligation. Alternatively, the property will have been properly acquired, legally and beneficially, but then circumstances develop such that it would be unconscionable for the owner to retain full beneficial ownership. Usually, the justification for the imposition of a constructive trust will be some original common intention of the parties that is subsequently denied or reneged on where the law would allow this but equity finds this to be unconscionable.

Sometimes, a constructive trust is imposed contrary to any intention of the defendant.<sup>9</sup>

[49] They state that a constructive trust will be created in connection with 'the legal title to property wherever one party has so conducted himself that it would be inequitable to allow him to deny to

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<sup>9</sup> Vol 98 (2019), para. 114.

the other party a beneficial interest in the property acquired.<sup>10</sup> The two ingredients of a constructive trust are a common intention that both parties should have a beneficial interest in the subject property; and a claimant who relying on such common intention, acted to her detriment or significantly altered her position.

[50] The court will infer that a constructive trust has been created where the claimant proves that she has made direct contributions to the purchase price of property in respect of which she is not registered is not the legal owner. Such payments may have been made by way of mortgage installments as in the instant case. The court will consider all relevant factors including discussions between the parties at the time of acquiring title; the reasons for extracting title in one or both names; the purpose for the purchase; and the nature of the parties' relationship.

[51] Applying the facts of this case to the legal principles, I find as a matter of law that Mr. Cato and Ms. Mc Lean had the common intention to acquire the subject property jointly and equally; that Ms. Mc Lean would be registered as part owner, and that she acted to her detriment in attaining that goal. This has not materialized. I infer that a constructive trust was created when Mr. Cato received the sums of money from Ms. Mc Lean with the agreed intention to pay towards the mortgage for the home which they decided to purchase and jointly own as equal partners. Mr. Cato is deemed to hold the money and by extension the legal and equitable title, interests and rights in the subject property in constructive trust for him and Ms. Mc Lean in equal shares.

[52] I find that Ms. Mc Lean has acted to her detriment by placing reliance on Mr. Cato's promises and agreement as alleged. I conclude that Ms. Mc Lean has established on a balance of probabilities that a constructive trust has been created in all the circumstances.

#### Promissory Note

[53] Mr. Cato submitted that his execution of the promissory note was not voluntary. He pleaded that his signature was secured through undue influence. He submitted that he has always denied owing Ms. Mc Lean. He contended that he signed the note due to undue influence. I do not consider it

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<sup>10</sup> Halsbury's Laws of England, Vol. 98 (2014) Para. 117.

necessary to address the matter of the promissory note in order to arrive at a determination of whether Ms. Mc Lean gave Mr. Cato US\$15,000.00 towards the purchase of the subject land. I do not factor that into my determination at all. However, for what it is worth, I have no hesitation in accepting Ms. Mc Lean's version of what happened.

[54] I make the observation that it is unusual in some parts of the world for police officers to immerse themselves in the middle of civil disputes between private citizens. I am not sure what obtains in Jamaica. While it is unorthodox for a police officer to assist private citizens to prosecute civil claims, it is not illegal.

[55] Mr. Cato contended that he was out-numbered, intimidated and frightened and signed the paper under duress because he feared for his life. He argued that the police officer used his position of authority to board the ship and remove him (Cato) and intimidate him into signing the paper. He submitted that it is more plausible to believe that he only signed the promissory note because he was coerced, threatened and feared for his life.

[56] Mr. Cato argued that it is interesting that the 3 additional witnesses who provided witness statements on Ms. Mc Lean's behalf (including the police officer Dave Harris<sup>11</sup>) were not available to testify on the trial date. I will not speculate as to the reasons for their absence and draw no adverse inferences.

[57] Mr. Cato relied on the decisions in **Allcard v Skinner**<sup>12</sup>, **Adnan Mkhoul v Sandra John**<sup>13</sup>, **Wingrove v Wingrove**<sup>14</sup> and **Campbell v Narine**<sup>15</sup> as authority on the law regarding undue influence. He submitted that he has provided overwhelming evidence of undue influence by the 3

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<sup>11</sup> The police officer who escorted Mr. Cato from the ship in Jamaica and who was present when he signed the promissory note.

<sup>12</sup> (1887) 36 Ch D 145.

<sup>13</sup> SVGHCV2008/0066 (unreported).

<sup>14</sup> (1885) 11 PD 81.

<sup>15</sup> [2016] CCJ 7 (AJ).

police officers and Ms. Mc Lean in the vehicle. He contended that once the court is satisfied, the burden shifts to the other party who must provide evidence to counter the evidence which would be drawn otherwise.

[58] Ms. Mc Lean denied that Mr. Cato was forced to signed the promissory note or that undue influence was exerted over him in the form of threats or the use of a gun. I accept her account. Mr. Cato's contradictory testimony undermines his credibility. His two conflicting accounts were presented without hesitation. They cannot both be true. I am reminded that the burden of proof remains on Ms. Mc Lean. I am satisfied that she has discharged it and established that Mr. Cato was not subjected to undue influence or any pressure into signing the promissory note.

#### Laches

[59] Mr. Cato submitted 'the defence of laches arises if two conditions are satisfied: First, there must be unreasonable delay on the part of the plaintiff in the commencement or prosecution of proceedings; and secondly in view of the nature and consequences of that delay it must be unjust, in all the circumstances to grant the specific relief in question. Prima facie, the time from which the length of delay is judged is the time at which the plaintiff became aware of the existence of facts that gave rise to a right to the equitable relief in question. In order that the remedy should be lost by laches or delay, it is, if not universally, at all events ordinarily necessary that there should be sufficient knowledge of the facts constituting the title to relief. It is not ordinarily sufficient that if she were reasonably diligent in the examination of relevant matters she would have had sufficient knowledge or doubt.'<sup>16</sup>

[60] Mr. Cato contended that Ms. Mc Lean instituted a claim against him in 2002 which was struck out and that she did nothing further for the next 6 years; then initiated action against him in 2016 some 14 years after she knew that the land was purchased, 10 years after she realized that her name was not on the deed and 6 years after he allegedly signed the promissory note. He argued that his defence of *laches* should prevail and that Ms. Mc Lean's claim should be dismissed. He contended that it would be unjust and inequitable to grant her any of the reliefs that she is seeking. He

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<sup>16</sup> Southern Developers Limited et al v The Attorney General of Antigua and Barbuda, ANUHC VAP2006/020A.

submitted that her claim should therefore fail and be dismissed with costs.

- [61] Ms. Mc Lean argued that *laches* is an equitable doctrine which is rooted in fairness and good conscience. She submitted that it would be grossly unfair and inequitable if she were to be restricted from getting a remedy. She submitted that Mr. Cato's conduct has been less than honourable. She submitted further that the equitable principle 'he who comes to equity must come with clean hands' must be invoked to prevent Mr. Cato from relying on *laches*.
- [62] Ms. Mc Lean relied on the decision in **Chatham Bay Club v Judith Jones Morgan (Attorney General for the State of Saint Vincent and the Grenadines)**<sup>17</sup> as authority for the proposition that delay is not a sufficient ground a defence of *laches*; and must be coupled with some conduct which affects the balance of justice between the parties.
- [63] The learned authors of **Halsbury's Laws of England**<sup>18</sup> have outlined the applicable legal principles in relation to the doctrine of *laches*. They point out that a claimant who seeks an equitable relief must prosecute her claim without undue delay and will not be aided otherwise. They note however that where a statutory period of limitation is applicable, the claimant is entitled to the full statutory period before his claim becomes unenforceable.
- [64] The Limitation Act provides no limitation period in cases involving claims for breach of constructive trust.<sup>19</sup> It is noted however that based on the very factual matrix urged by Mr. Cato, Ms. Mc Lean was undeterred over the years in pursuing her claim against him. Even though her initial claim was struck out for her failure to provide security for costs, she was unrelenting. The court notes the surrounding circumstances including Ms. Mc Lean's address outside of the State of Saint Vincent and the Grenadines with the related issues of retaining and instructing counsel. I am of the

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<sup>17</sup> SVGHC VAP2007/0021.

<sup>18</sup> Vol. 47 (2014), para. 253 (Lexis Nexis Ed.).

<sup>19</sup> Section 23 of the Limitation Act, Cap 129 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.



considered opinion that she did not delay in taking legal action. She initiated this claim<sup>20</sup> a year after she discovered that her name was not on the deed that she first learnt of the deed, and after her attempts to get Mr. Cato to repay her failed. In the premises, Mr. Cato's reliance on the doctrine of *laches* may not be invoked in the circumstances of this case.

[65] Moreover, when deciding if *laches* is a viable defence, the court examines the facts of the case to ascertain whether the claimant acquiesced in the defendant's violation of her rights or waived such rights; or if there has been a change in the defendant's position. Proof is required in either case.<sup>20</sup> No evidence has been adduced in this case which demonstrates that Ms. Mc Lean acquiesced in Mr. Cato's conduct about which she complains. Likewise, no evidence has been adduced that Mr. Cato's circumstances have changed in relation to the subject property since the alleged wrongs. I am satisfied that Ms. McLean has not waived her rights and that there has been no substantial change in Mr. Cato's position. There is evidence of neither. I find therefore that Mr. Cato's defence of *laches* is without merit.

## **Issue 2 – To what remedies if any, is Ava Mc Lean entitled?**

[66] Ms. Mc Lean has established that she gave Mr. Cato certain sums towards the purchase price of the subject land. I accept that she did and that he expended those sums towards repaying the loan for the land. Ms. Mc Lean is entitled to be made whole. She submitted that she should be reimbursed the sum of EC\$42,000.00 the amount she estimated that she gave towards the purchase of the subject property. Her evidence is not exact as to the amount given to Mr. Cato towards the mortgage. I find that it was in excess of US\$8,000.00. Mr. Cato insisted that she is not entitled to any interest in the said property or reimbursement of her contributions to its acquisition.

[67] It is established in law that where money has been invested in the purchase of property, the beneficial owner has the right to trace those funds into property in which it has been invested;<sup>21</sup> elect to take the purchased property<sup>22</sup> or have a charge on it for the amount of the trust money<sup>23</sup>.

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<sup>20</sup> SVGHCV2007/0255.

<sup>21</sup> *Brooksbank v Smith* (1836) 2 Y & C Ex. 58.

[68] Having regard to the earlier finding of a common intention between the parties to acquire the land at Questelles, the court must have regard to that intention in crafting a suitable remedy. Ms. Mc Lean has established that she acted to her detriment in so doing. The monies having been invested in the land, she has thereby gained an equal interest in the subject land registered in Mickell Cato's name by Deed of Conveyance No. 2228 of 2002. She is entitled to be made whole. Ms. Mc Lean is therefore entitled to a share in the subject property or a charge on it to secure repayment of those sums to her. She is also entitled to an injunction to prevent Mr. Cato from disposing of the land and thereby frustrate her efforts to recover the fruits of this judgment.

[69] It is declared that Mr. Mickell Cato and Ms. Ava Mc Lean equally own the legal and beneficial interests in the subject property. It is ordered that the property be valued by a licensed property valuator agreed to by the parties and that the expenses associated with obtaining the valuation report be shared jointly by the parties. Mr. Cato shall pay to Ms. Mc Lean a sum equivalent to 50% of the value of the subject property. Mr. Cato is restrained from selling, transferring or otherwise dealing with the subject property in a manner detrimental to Ms. Mc Lean's interest.

### **Costs**

[70] The general rule is that the successful party is entitled to recover her costs. Having prevailed, Ms. Mc Lean is entitled to prescribed costs pursuant to CPR 65. 5(2)(b). It is accordingly ordered that Mr. Mickell Cato shall pay to Ms. Ava Mc Lean prescribed costs of \$7500.00.

### **ORDER**

[71] It is declared and ordered:

1. Judgment is entered for Ava Mc Lean.
2. Mr. Mickell Cato and Ms. Ava Mc Lean equally own the legal and beneficial interests in the

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<sup>22</sup> Ministry of Health v Simpson [1951] AC 251. See also Halsbury's Laws of England, para. 238; Vol 47 (2014).

<sup>23</sup> Re Hallet's Estate, Knatchbull v Hallet (1880) 13 Ch D 696.

subject land registered by Deed of Conveyance No. 2228 of 2002<sup>24</sup>.

3. Mr. Mickell Cato shall arrange for the subject land to be valued on or before 29<sup>th</sup> August 2019, by a licensed property valuator agreed to by the parties; the expenses associated with obtaining the valuation report be shared jointly by the parties.
4. Mr. Mickell Cato shall on or before 31<sup>st</sup> October 2019, pay to Ms. Ava Mc Lean a sum equivalent to 50% of the value of the subject land, (less expenses associated with the valuation report) such sum to be paid with interest thereon at the rate of 6% per annum<sup>25</sup> from the date of judgment until full satisfaction.
5. Until the judgment sum is paid in full, Mr. Mickell Cato is restrained from dealing with the subject land in any manner, whether by selling, mortgaging, partitioning, transferring, leasing or otherwise which would reduce or adversely affect Ms. Ava Mc Lean's interests in the land.
6. Mr. Mickell Cato shall pay to Ms. Ava Mc Lean, prescribed costs of \$7,500.00 pursuant to CPR 65.5(2) (b).

[72] I am grateful to counsel for their helpful written submissions.

**Esco L. Henry**  
**HIGH COURT JUDGE**

By the Court

Registrar

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<sup>24</sup> Registered on 1<sup>st</sup> July 2002.

<sup>25</sup> Pursuant to section 27 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap. 24; and section 4 of the Interest Act, Cap. 27, of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.