THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2017/0296

IN THE MATTER of property situate at East Park Range, Basseterre, St. Kitts

AND

IN THE MATTER of an Indenture of Conveyance dated 22 March 2005 and recorded at Liber X Volume 7 Folio 1215 to 1220 of the Register of Deeds for use in the Island of Christopher

BETWEEN:

1. GLORIA HENRY-ARTHURTON
2. CROMWELL HENRY
(Trustees for Jermellia and Jelony Henry)

Claimant

and

ST. CLAIR ARTHURTON

Defendants

Appearances:

Ms. Natasha Grey for the Claimants
Ms. Marcella Liburd and Mrs. Yvonne Bussue-Flemming for the Defendant

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2019: July 26, 30
October 14

JUDGMENT

[1] **VENTOSE, J**.: The Claimants on 13 October 2017 filed a fixed date claim seeking a declaration that the First Claimant is the sole beneficial and legal owner of the property situated at East Park Range, Basseterre, St. Kitts and Recorded in Liber X Volume 7 Folios 12150 to 1220 of the Register of Deeds in the Island of St. Christopher (the "**Property**"). The Defendant counterclaimed seeking: (1) a declaration that he is one of the legal owners of the property and that he is entitled to a third interest in the said property; (2) an account of all the rent monies collected from the said property; (3) a declaration that he is entitled to a third of the rent monies; (4) an order to transfer a third of the rent monies to him; (5) an order that he be repaid the sums withdrawn from his account No. 3635050 over and above the EC$500.00 per month or alternatively such reasonable sum as determined by the court.

[2] The First Claimant and Defendant are husband and wife. The Second Claimant is the son of the First Claimant. There is no dispute that the Property is in the names of the parties to this action as legal owners. The question that essentially arises for determination is: in which of the parties does the beneficial interest in the Property reside? Having regard to the evidence of both parties given at trial, I believe the evidence of the First Claimant. The First Claimant paid a deposit of $40,000.00 on 6 December 2014 for the purchase of the Property, with the balance of $135,000.00 being paid on 11 February 2005. It was the evidence of both parties that the Defendant authorized the First Claimant to withdraw the sum of $500,00 per month from a bank account which was opened in the name of both parties in 1999. The First Claimant gave evidence at trial that she put the Defendant's name on the title to the Property because she "favoured" him.

[3] It was not disputed that after the Property was acquired only the First Claimant conducted any or all transactions in relation to the Property. The First Claimant carried out extensive repairs on the Property which included removing and replacing the roof, expanding the kitchen, re-wiring the house for electricity,

repairing the floor, tiling, and installing new toilets and painting the Property. It was also not disputed at trial that it was the First Claimant who paid all the bills and taxes associated with the Property and the First Claimant was solely responsible for maintaining the Property. The First Claimant alone dealt with the renting of the property since she bought it in 2005.

[4] The Defendant gave evidence at trial that he was aware that the Property was to be bought but provided no details about the purchase price or from whom it was to be purchased. I have no doubt that the First Claimant is correct that the Defendant did not know about the purchase of the Property and found out about it when he was "snooping around" in her bedroom after she left the home to ply her trade. During the course of the trial, the Defendant admitted many times that he knew little if anything about the Property, was not involved in the purchase of the Property or the carrying out of any repairs to the Property after it was acquired.

[5] The Defendant's case is essentially that his monies contributed to the purchase of the Property and that, consequently, he is entitled to share in the beneficial interest. The Defendant was not able to provide any specific evidence of any direct contributions he made to the purchase of the Property. The Defendant is a pensioner and was earning the sum of EC$486.17 per month. It will be remembered that both the Defendant and the First Claimant gave evidence that they both agreed that the First Claimant was to withdraw the sum of EC$500.00 from the bank account of which both of them were signatories. Contrary to the evidence of the Defendant that he added the First Claimant's name to his account in 2005, the evidence is that the account was opened on 2 February 1999 in the name of both parties with instructions to the bank that "either can sign" in relation to transactions on the account.

[6] While there is no doubt that the Defendant's pension of $486.17 was paid into the account, this was subject to his agreement with the First Claimant that she can withdraw $500.00 each month from the account as his contribution to the household expenses. The First Claimant's evidence is that she did not withdraw the monies each month, but she was nonetheless entitled to it because of the

agreement she had with the Defendant. The First Claimant stated that she made deposits to this joint account on various occasions from her business and that all the monies in the account actually belonged to her. She accepted that she had other bank accounts which were in her sole name.

[7] The First Claimant gave evidence that she bought the Property for her grandchildren, which may explain why she ensured that it was put in their father's name, the Second Claimant, in trust for them. The Defendant admitted at trial that it was the intention that the First Claimant's grandchildren would inherit the Property on the First Claimant's death.

[8] The Claimants seek a declaration that the First Claimant is the sole beneficial and legal owner of the Property. There is no reason why this declaration should not be granted and further for an order that the Property be conveyed in the sole name of the First Claimant.

[9] From the evidence, it is clear that only $40,000.00 was taken from the joint account to pay for the deposit on the Property. The question is: what is the effect of this on the beneficial interest of the parties in the Property?. In **Re Bishop (deceased); National Provincial Bank Ltd v Bishop and Others** [1965] 1 All ER 249, a husband and wife opened a joint bank account to which they transferred the amounts to the credit of their separate accounts, which were then closed. Both of them made payments to the joint account from their investments. Household expenses were paid from the account and the husband used funds from the account to pay for investments both in his name and some in the name of his wife. The court had to answer the question as to who the beneficial owner of the investments was from monies taken from the joint account, answering as follows:

> Now, where a husband and wife open a joint account at a bank on terms that cheques may be drawn on the account by either of them, then, in my judgment, in the absence of facts or circumstances which indicate that the account was intended, or was kept, for some specific or limited purpose, each spouse can draw on it not only for the benefit of both spouses but for his or her own benefit. Each spouse, in drawing money out of the account, is to be treated as doing so with the authority of the other and, in my judgment, if one of the spouses purchases a chattel for his own benefit or

> an investment in his or her own name, that chattel or investment belongs to the person in whose name it is purchased or invested: for in such a case there is, in my judgment, no equity in the other spouse to displace the legal ownership of the one in whose name the investment is purchased. What is purchased is not to be regarded as purchased out of a fund belonging to the spouses in the proportions in which they contribute to the account or in equal proportions, but out of a pool or fund of which they were, at law and in equity, joint tenants. It also follows that if one of the spouses draws on the account to make a purchase in the joint names of the spouses, the property purchased, since it is purchased in joint names, is, prima facie, joint property and there is no equity to displace the joint legal ownership. There is, in my judgment, no room for any presumption which would constitute the joint holders as trustees for the parties in equal or some other shares. That this is the law is, I think, an inescapable conclusion, from the judgment of Pearson J in Re Young, Trye v Sullivan, which, so far as I am aware, has never been doubted, and from the judgment of Diplock J in Gage v King.

[10] My understanding of this paragraph is that where a husband and wife operate a joint account not for any specific purpose in circumstances where either can sign on the account any property purchased by either husband or wife with monies withdrawn from the joint account in his or her own name belongs to him or her alone. In the instant case, the property purchased by the First Claimant was put in the names of herself, her son on trust for her grandchildren and the Defendant. In such as case the following principle applies: if one of the spouses draws on the account to make a purchase in the joint names of the spouses, the property purchased, since it is purchased in joint names, is, prima facie, joint property and there is no equity to displace the joint legal ownership. The Claimants cannot therefore derive any benefit from **Re Bishop**; rather than assist their case it undermines it insofar as it makes clear that where monies taken from a joint account is used to purchase property in the joint names of a husband and wife there is nothing in such circumstances to displace the joint legal ownership.

[11] In **Stack v Dowden** [2007] 2 AC 432, the House of Lords had to determine the beneficial interests in a house acquired in joint names by an unmarried couple who intended it to be their family home. There was a significant difference between their respective financial contributions to the purchase. At trial, the judge held that the proceeds of sale should be divided in equal shares, but the Court of Appeal

allowed the appeal and divided the proceeds 65% to 35% in favour of the wife. The House of Lords unanimously agreed with the Court of Appeal. In **Jones v Kernott** [2012] 1 AC 776, Lord Walker of Gestingthorpe and Baroness Hale of Richmond attempted to distill the following principles from the decision of the House of Lords in **Dowden**. First, the decision concerned the case of a house transferred into the joint names of a married or unmarried couple, where both are responsible for any mortgage, and where there is no express declaration of their beneficial interests. Second, the mere fact that the parties had contributed to the acquisition of the home in unequal shares would not normally be sufficient to rebut the presumption of joint tenancy arising from the conveyance. Third, the task of seeking to show that the parties intended their beneficial interests to be different from their legal interests was not to be lightly embarked upon. Fourth, however, if the task is embarked upon, it is to ascertain the parties' common intentions as to what their shares in the property would be, in the light of their whole course of conduct in relation to it. They explained that:

> 17 The starting point is different because the claimant whose name is not on the proprietorship register has the burden of establishing some sort of implied trust, normally what is now termed a "common intention" constructive trust. The claimant whose name is on the register starts (in the absence of an express declaration of trust in different terms, and subject to what is said below about resulting trusts) with the presumption (or assumption) of a beneficial joint tenancy.

[12] Lord Walker and Baroness Hale explained that the search is primarily to ascertain the parties' actual shared intentions, whether expressed or to be inferred from their conduct (at [31]). Karen Nunez-Tesheira in her well-researched and comprehensive treatise entitled, Commonwealth Caribbean Family Law: Husband, Wife and Cohabitant (Routledge 2016), summarizes (at 289) the applicable legal principles as follows:

> With respect to joint names ownership cases, the first hurdle is already established by virtue of the joint ownership of the subject property by the parties. It therefore starts with the presumption of a beneficial joint tenancy based on a joint enterprise in respect of persons in an intimate or a trusting personal relationship. As the court pointed out In Stack v Dowden, a joint ownership case, the conveyance in joint names is

> sufficient, at least in the vast majority of cases, to surmount the first hurdle and the approach to the second hurdle, although arrived at from a different factual and legal matrix, is essentially the same.

[13] Nunez-Tesheira continued that:

> However for the purposes of quantification of the respective parties' beneficial interest in the subject property, the court is not restricted, as it is with respect to establishing evidence of a common intention in the case of the sole owner, to financial contributions, whether direct or indirect and to extraordinary non-financial contributions but may also take into account, where appropriate and necessary, the whole course of dealings evidence, which evidence covers a wide range of domestic related activities, including non-financial contributions.
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> The whole course of dealings evidence as Lady Hale noted in Stack is not an exhaustive list, and includes any advice or discussions at the time of transfer which cast light on the parties' intentions then; the purpose for which the property was acquired; the nature of the relationship between the parties; the personalities of the parties; how they arranged their finances; how they discharged outgoings on the property and their other household expenses; whether they had children for whom they both had responsibility for providing a home. It is to be noted accordingly that unlike the first hurdle evidence of common intention in which housekeeping and caregiver non-financial contributions are not considered as indirect evidence of a common intention, these non-financial contributions are included as part of the whole course of dealings evidence in respect of the quantification of each party's share in the disputed property.

[14] In relation to any course of dealing between the First Claimant and the Defendant, the First Claimant bought the Property not as a marital home but as a property for her grandchildren when she passes. This was not disputed, and the Defendant confirmed that this was his understanding in relation to the Property. Second, there were no mortgage payments made by either the First Claimant or the Defendant in respect of the Property. In fact, the First Claimant paid cash for the Property with $40,000.00 paid as a deposit with the balance of $135,000.00 being paid later. Third, the parties did not live in the Property at any time whatsoever.

[15] It is clear that, first, no evidence was adduced at trial that when the First Claimant acquired the Property the parties had any discussion with respect to the beneficial ownership of the Property. In fact, the evidence of the First Claimant that I have accepted is that the Defendant played no role in the acquisition of the Property

and was informed about it long after its purchase by the First Claimant. The Defendant was not even aware that monies withdrawn from the joint account were used as the deposit on the purchase price of the Property. There were no discussions at the time the Property was purchased. As mentioned above, the First Claimant arranged and financed all the renovations and maintenance of the Property and arranged for tenants to occupy the Property and was the only one who collected the rental income from the Property. The First Claimant and Defendant did not have any children and the evidence was that the First Claimant took care of the needs of the Defendant for which he contributed the sum of $500.00 towards the household expenses.

[16] The course of dealings between the parties do not lend any support to the Defendant's counterclaim that he is entitled to one third interest in the property. As the Defendant himself admitted, the intention was that the First Claimant's grandchildren would inherit the Property on her death. In other words, the Property was purchased with the express intention to benefit her grandchildren and the Defendant accepted this. Consequently, the Defendant is not entitled to any of the declarations or orders that he seeks. Moreover, the order that the Defendant seeks that he be repaid the sums withdrawn from his account No. 3635050 over and above the EC$500.00 per month or alternatively such reasonable sum as determined by the court must be rejected because the account was in name of both the First Claimant and Defendant with a mandate to the bank that both of them can sign. The Defendant has, therefore, failed to establish any basis for his counterclaim which is hereby dismissed.

Disposition

[17] For the reasons explained above, I make the following orders:

(1) A Declaration is granted that the First Claimant is the sole legal and beneficial owner of the Property.
(2) An order is granted directing the Registrar of Lands to issue a certificate of title in the sole name of the First Claimant within 14 days of today's date.
(3) The counterclaim is hereby dismissed.

(4) Prescribed costs to be paid by the Defendant to the Claimants on their claim and on the counterclaim in accordance with CPR 65.5 within 14 days of today's date.

Eddy D. Ventose
High Court Judge

By the Court

Registrar