



[2014] JMSC Civil 9

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010 HCV0201

BETWEEN ALISON CHRISTIE BINGER CLAIMANT
A N D MICHAEL RANGER DEFENDANT

Mr. B. Frankson and Miss. J. Hammit instructed by Frankson and Richmond for the Claimant.

Miss. C. Johnston and Miss. S. Williams instructed by Townsend, Whyte and Porter for the Defendant.

Heard: October 18th & 19th, 2012, October 9th, 2013 and February 5, 2014

Division of Property – Unmarried couple – Parties meeting whilst Defendant still married to another – House constructed on land owned by Claimant – Defendant using NHT benefits to assist in construction – Defendant assisting in the construction – Whether Defendant acquired interest in house by virtue of constructive trust.

P.A. Williams, J.

1. The parties in this matter were in a relationship that lasted at least five (5) years. During the period they were intimately involved, a house was built on lands owned by Alison Christie Binger, the claimant. There is no dispute that Michael Ranger, the defendant, assisted her by providing his National Housing Trust Points valued at one million five hundred thousand dollars and gave consulting/technical advice and guidance as an electrical engineer, in seeing the house through to its completion in 2006. The claimant then had her dream house but the relationship had come to an end by 2009.

2. The defendant had been living in the house at that time and his refusal to leave was based on his assertion of having an interest in the house. The claimant turned to the courts and filed a fixed date claim form on January 20, 2010. She therein is seeking the following orders inter alia:
 1. A declaration that the claimant is the fee simple owner and is entitled to sole possession of all that parcel of land situated at 2 Aguilar Road, Kingston 9 in the parish of Saint Andrew registered at Volume 1249 Folio 749 of the Register Book in the Office of Titles.
 2. An injunction restraining the defendant whether by himself, his servants and/or agent or otherwise from entering, loitering, destroying and/or dealing with the said aforementioned property.
3. An interim injunction was obtained on the 22nd of January 2010 and this was extended until November 2010. The defendant was restrained from any dealings with the property. He filed a notice of application for Court Orders on May 6, 2010 seeking the following Orders, inter alia:
 1. A declaration that the Defendant holds the property on trust for the Claimant/Respondent and the Defendant/Applicant in equal shares or alternatively in shares which are proportionate to their contributions to the construction or alternatively in such shares as the court shall determine.
 2. In the further alternative, a declaration that the Defendant/Applicant is an equitable tenant in common of the said premises situate at 3 Aguilar Road, Kingston 9.
 3. An account or inquiry as to the beneficial ownership of the property.
 4. An order for the sale of the property pursuant to Rule 55 of the Civil Procedure Rules with the proceeds being distributed pursuant to the trust.
 5. An order that the Claimant pays the defendant mesne profits and/or rent for the time he was kept out of his own home.

The relationship

4. Now that the intimacy is over, the parties are unable to agree as to when it began. She said it began in 2003, he said it was in 2002. It is undisputed that they lived in the same apartment complex but as she put it they never cohabited as she was not interested in a common-law relationship. He described her as having been his common-law wife.

5. There could have been no common law union as our law has come to recognize it because the defendant was a married man when they met and for much of the time they were together. Although there is no dispute as to the fact that she was aware of this, there is dispute as to when it was that he told her of his status and advised her he had commenced divorce proceedings. She said it was in 2003 he said it was may be in 2006 or 2007. The decree nisi was obtained in 2008 and the absolute in 2009. He had been separated from his wife from 1994 and had no interest in remarrying.

The construction of the house

6. The claimant said that construction commenced in late 2004 or early 2005. Under cross-examination she conceded that she could not recall precisely when in fact it started; as the documents exhibited, which spoke to the letters of commitment for mortgage financing for the construction, are dated from November 18, 2005 to February 17, 2006. There is no dispute that not only did the defendant sign over his National Housing Trust monies to her but he acted as guarantor for the loans from Jamaica National Building Society she subsequently obtained. Indeed it is the defendant who exhibited the documents referred to above which had him named as one of the guarantors along with a Mr. Geoffrey Christie, a brother of the claimant.

7. The claimant outlined the various sources through which the construction of the premises was financed but offered no documentary proof to these assertions. However, she insisted that she was solely responsible for the repayment of the loan although the defendant, she said assisted by making three (3) of four (4) mortgage payments to the Jamaica National Building Society totaling approximately \$166,000.00. He said it was six to nine months mortgage payments that he made.

8. The dispute as to how the house came to be constructed commenced from the very planning stage. He said it was with his help that she was able to get approval for the plan from the Kingston and St. Andrew Corporation "KSAC". It was his team of professionals who modified the drawings and adjusted the surveys to conform with the requirements of the KSAC. The cost to her was significantly reduced based on his intervention. She did not totally agree with this depiction of his role. Whereas she agreed that there had been no approval initially and that the plans submitted needed modifications which were made, she said while the draftsman was recommended by the defendant, she paid appropriate sums for the work done. She would seem to be suggesting that the defendant exaggerated the role he played in this process.

9. As to the actual construction, the defendant said he took on the role of project manager and was on the site regularly to oversee the work being done. She agreed that he did visit regularly but said she had a contractor on the site who was responsible and competent. She conceded that they had regular site meetings and that he attended most of them.

10. He said he was able to get discounts by using his own sub-contractors. He was active in actually delivering goods to the site himself or in having a truck employed to his business do the deliveries. She denied this and maintained that

the goods were delivered by the companies from which they were purchased and she paid for those deliveries either personally or through the contractor.

11. He pointed to the difficulties encountered in constructing a drive-way to the house given the terrain of the property. He said it was he who suggested how easiest it could be done and ended up having to commission a front end loader several times to grade down the slope of the drive way. The cost was \$3500 .00 per hour and each trip took about eight (8) hours to use the front end loader. He declared that the money to pay for this and other landscaping cost came out of his pocket. She disagreed that he commissioned any front end loader or paid for the grading. She said it was her contractor who got someone to do that work and she paid.
12. He said a stone wall had to be constructed and it was he who engineered it and paid for the workers that he got. He estimated that he put up 60% of the cost of construction but she disagreed with that estimation. She was not asked and did not offer her own estimation of what, if any, money he put toward the erection of the wall.
13. He said it was his sub-contractor who did the wiring of the house and this meant the cost was significantly reduced and he paid 40% of the eventual cost. Whereas she conceded that the electrician was procured through the defendant, she could not confirm the cost of the electrical work but was unaware that the defendant had paid either 40% or 60% of the cost.
14. One other aspect in the construction work which was raised as a matter of dispute was the tiling of the bathroom. It was suggested to the claimant that it was the defendant who solely financed this work. She countered that the defendant had recommended someone to do the work but when completed she thought it was shoddily done. It had to be dug up and redone by someone else.

She ultimately ended up paying twice for the material and the labour involved in getting the work done to her satisfaction.

15. The completed house was described by the claimant as having three (3) bedrooms on the upper floor with a helper's quarter with another bedroom on the lower; three (3) functional bathrooms and two (2) non-functional ones; a living room; kitchen and a patio. It was in answer to a question posed by the court that there was any effort to give a valuation of the house. The claimant estimated the present value to be approximately thirty-four (\$34M) million dollars. There was no estimation given from either side as to what was the actual expenditure in construction of this dream house. A quantity survey for the project exhibited by the defendant which he said he prepared, at no cost to the claimant, gave the figure of \$11,150,369.00.

After the construction

16. The house was completed by late 2006. There is dispute as to when occupation of it commenced. The defendant maintained that he moved in as soon as it was completed. The claimant said it was sometime in 2008 that she permitted him to stay there. She said he had complained of financial stress that he was experiencing and that he had to be living at his parent's home. She therefore told him to stay at the house at 3 Aguilar Road as she was not herself residing there.
17. The claimant, however, said it was her furniture that was placed in the house. Further she said it was she who paid for the utilities supplied at the house. She also paid the mortgage but the defendant insisted that he paid it for six (6) to nine (9) months. In any event it is agreed that she spent much time at the house. She said she worked from there during the days. She however insisted that they never actually lived together at that address.

18. By September of 2009 the claimant said she wanted to return to her property to live and told the defendant of this desire. By this time the relationship seemed to have started to deteriorate. The claimant's request that he leave the house was met with refusal. The defendant said it was in October 2009 that she moved in and began to pressure him to marry her and it was when he refused to do so that she asked him to move out.
19. The claimant said it was on the 16th day of November 2009 that she packed his personal belongings and had them delivered to his office. This, she said, was in pursuing her exercise of her rights as the legal owner of the premises. The defendant explained that he had told her he did not intend to cause trouble but needed to have his interest in the house settled and be fully compensated for his interest before he moved.
20. By January 7, 2009 a document had been prepared by the defendant and signed by them both which he viewed as necessary for acknowledging some of his contributions to the home. She said she signed it as a result of pressures and demands from him. He however countered that she signed it of her own free will because she knew it was true. Further he asserted that she knew his contributions were in fact much greater and she was happy to sign a document which devalued his contributions.
21. The document stated:-

This serves to confirm that Michael Ranger has facilitated services to the tune of five million dollars (\$5M) as construction cost with regards to the abovementioned property.

This sum represents the following:-

 - ACE fencing
 - NHT Mortgage benefit *2006 –
 - Stone Walls

Electrician

Consulting/Technical assistance

Contingency

*In acknowledgement that the NHT mortgage benefit has since risen to \$3M – the sum has been adjusted accordingly.

22. In the final analysis the defendant felt that without his assistance and expertise there would be no house. He said he spent his monies and used his time and knowledge to build the house which he thought could be his dream house as well as hers. He maintained that the reason he assisted to the extent he did was because she had repeatedly promised him that his name would be added to the certificate of title once his divorce was completed. The promise was first made from 2003 or 2004 that once he helped with the National Housing Trust funds and with his expertise, she would have his name put on the title.
23. She conceded that the work he did for her would have otherwise attracted a fee but she said he told her he did not wish to be paid for what he did. She viewed what he did as the actions of a good boyfriend who assisted because of their relationship. She does not deny that she relied on him and his expertise but thought it was given because of what they shared. She maintained she never promised him any reward for the services rendered. She was insistent that it was never her intention to have him as co-owner of her house. She was adamant that she never made any promise and was not renegeing on any promise.
24. The claimant indicated that she in return did things for him in the capacity of a good girlfriend. She permitted him to live at the house for approximately two (2) years free of cost whilst she paid virtually all the mortgage, upkeep, maintenance, taxes, utility bills and cable bills; except for two month light bill, one month phone bill, one payment for cable and very small contributions for the

mortgage payment over one to two months. He also had access to all facilities in particular her office facilities since she worked from that home. Further she pointed to the fact that his son also spent a considerable amount of time there and he entertained his friends there whilst never inviting her.

25. The defendant went on to assert that he acted to his detriment as, with the claimant putting him, out of their home he had no place to live. He also said that he had decided that since they were building a home for their future together, he would give his ex-wife the matrimonial home and took no payments for any interest in that home. Under cross-examination, however, the defendant explained that it was from before the divorce proceedings that he had told his now ex-wife he wasn't interested in filing or claiming anything re the house they owned. He said he had told her that it was for her and their children. This he said had taken place sometime in 1999 and in any event he had settled matters with the house long before the eventual divorce proceedings.

The submissions

For the claimant

26. The issues identified for consideration are as follows:-
- (a) Was there a constructive trust, i.e. a common intention between Ms. Binger and Mr. Ranger that the defendant should acquire a beneficial interest in property situated at 3 Aguilar Road?
 - (b) Secondly, if there was a constructive trust, whether or not the defendant acted to his detriment in reliance on that common intention between them that he would acquire a beneficial interest.
27. The case of **Stack v. Dowden [2007] UKHL 17** was the case that is relied on as being instructive in that it delineates that a party may still be able to apply to the Court for a determination of their interest in property. It was submitted that their Lordships opined that to determine the parties' share in the property, the

court must determine the common intention of the parties based on their discussions and actions. When property is registered in joint names, the basic presumption is that each party had an interest in the property. Further, it was submitted, the authority affirms the principle that the parties' intention is to be gleaned from financial contributions as well as other factors at the time of the acquisition.

28. On the matter of mortgage payment affecting interest, the case of **McKenzie v. McKenzie [2003] All ER 155** is referred to in support of the primary submission that a contribution to the purchase price will not necessarily give a beneficial interest proportionate to the contribution under the strict application of the principles of resulting trust.
29. It was the words of Lord Bridge in **Lloyds Bank plc v. Rossett [1990] 1 All ER 1111** that was pointed to as providing the starting point for any discussion on the approach by the courts in resolving disputes regarding beneficial interest in property.

At page 1118 he stated:-

"The first and fundamental question which must 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 had at any time prior to acquisition, or exceptionally at some later date been any agreement, arrangements or understanding reached between them that the property is to be shared beneficially."

30. Further, it is urged that this common intention, which had been said to mean a shared intention communicated between the parties to own property jointly, can only be assessed on the basis of evidence of expressed discussions between the parties, "however imperfectly remembered and however imprecise their terms may have been." Once a finding to this effect is made and it is established that

there was a shared intention communicated between the parties that they should own the property jointly, 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 had 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.

31. In applying the law to the matter, Mr. Frankson highlighted his view that the defendant ought not to be regarded as credible. The primary thrust for this attack was – the question which surrounded the status of the defendant for much of the relationship. He urged that the existence of a common intention to share in the premises cannot be substantiated. Further it was argued that whatever the defendant did; was provided in the form of a gift and that the defendant gave assistance for which he said he did not wish to be paid. It was also submitted that the evidence clearly showed that there was no agreement or intention for the parties to share the beneficial interests in the property.
32. Mr. Frankson went on to urge the court to conclude that notwithstanding the defendant's contributions to the mortgage payments he could not have had a reasonable expectation that his name would be placed on the title once he was divorced because, as he stated, he no intention of marrying the claimant. The question posed is how then could the defendant have relied upon what he says he was told by the claimant to his detriment if the claimant knew that he never intended to marry her.
33. In considering the principle of determining whether there was an intention that a party have a beneficial interest in property, the cases of **Oxley v. Hiscock [2004] 3 WLR 715** and **Geary v Rankine [2012] EWCA Civ. 555** were referred to. The cases clearly demonstrated the approach to be taken in these matters such that the argument for the claimant was that there can be no

presumption of joint beneficial ownership in property merely because both parties contributed to its acquisition. There had to be proof of common intention and in the instant case Mr. Frankson opined that the defendant had not surmounted the hurdle of showing the existence of any; whether actual or inferred.

For the Defendant

34. Miss. Johnston in her submissions on behalf of the defendant also acknowledged the guidance to be obtained from the decision in **Stack v. Dowden** [supra]. She opined that an intention in the instant case was to be ascertained from the fact that from the outset the parties jointly acquired a loan to assist in the construction of the property; the defendant supervised the construction, procured technical expertise, maintained an aggressive cost saving program and also paid substantial sums to aid in different aspects of the construction. He also made mortgage payments and paid utility bills.
35. It is therefore the submission that the defendant has met the threshold required to show that these acts were done in furtherance of the belief that he had an interest in the property albeit, that she was the sole owner. His actions therefore are to be viewed as going further than merely assisting her because of their relationship.
36. The local Supreme Court decisions of **Hinds v. Wilmot Claim No. 2009 HCV 00519** and **Campbell v. McCallum & Renea Whitmore Claim No. 2003 HCV 01825** were referred to and relied on. The former, it was submitted would be useful as it discusses the presumption of a beneficial interest where someone acquires a loan to assist in the completion of the property. It was noted that an important distinguishing feature is that in that case the claimant signed a document which stated that he did not wish to have an interest in the property.

37. In the latter the Court awarded the claimant an interest in all the assets acquired while the parties were together. The facts of the case paralleled the instant one since the defendant was denying the claimant's purported interest by averring that whatsoever he had contributed was done as a result of their intimate friendship and done merely as a gesture of friendship. Thus Miss. Johnston urged that a similar view ought to be taken of the defendant in the instant case. As she put it the defendant "was the ingredient that catapulted the progress from undeveloped land to a family home". – "acquiring a mortgage and saving on costs was crucial to the successful construction and completion of the dwelling home".
38. The case of **Young v. Young [1984] FLR 375** was also relied on. It was Miss. Johnston's opinion that if the Court had assessed that the family home could not have been acquired without the contributing party incurring liability or potential liability this may be grounds for inferring a common intention to take a beneficial interest. In the instant case, the submission is that defendant demonstrated that the claimant could not have completed the property without him because of the pivotal role he played in its construction. There is no evidence that the construction could have been completed without the defendant's benefits and there is no doubt that in gifting his points to the claimant the defendant acted to his detriment as he can no longer access another housing benefit.
39. It is Miss Johnston's submission that the defendant demonstrated that he is a man of condor and was frank with the tribunal, with his testimony being consistent. Thus she opined the following conclusions can be made; he partnered with the claimant at a time she was the owner of undeveloped land; he had much to offer to enable construction of a home thereon; the oral agreement between them was that he would contribute his time, talent and treasure to building a home thereon; and once his divorce was complete, his name would be added to the title for the premises.

The applicable legal principles

40. In their submissions, the attorneys-at-law quite properly recognized that a starting point for an exposition of the law relating to this area is **Stack v. Dowden** [supra]. It is however now recognized that the Supreme Court of England had an opportunity to revisit that decision of the House of Lords in the case of **Jones v. Kernott [2012] 1 AC 776**. It is therefore to this decision I will look for guidance as to how to approach the instant case.

41. Lord Walker and Baroness Hale in their joint judgment summed up the position as follows at paragraphs 51 and 52 inter alia:-

51. "In summary therefore, the following are the principles applicable in a case such as this, where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage but without any express declaration of their beneficial interest (1) The starting point is that equity follows the law and they are joint tenants both in law and in equity. (2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home or (b) that they later formed the common intention that their respective shares would change (3) Their common intention is to be deduced objectively for their conduct:

"the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by the party's words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party". Lord Diplock in **Gissing v. Gissing 1971 AC 886, 906**".

Examples of the sort of evidence which might be relevant to drawing such inferences are given in **Stack v. Dowden [2007] 2 AC 432** para. 69 (4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset or (b) had changed their original intention, but it is not possible to ascertain

by direct evidence or by inference what their actual intention was as to the shares in which they own the property – “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”. Chadwick C.J. in **Oxley v. Hiscock** [2005] Fam 211 para. 69. In our judgment, “the whole course of dealingin relation to the property” should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties’ actual intentions (5) Each case will turn in its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended [as in case (3)] or fair [as in case (4)]

52. This case is not concerned with a family home which is put in the name of one party only. The starting point is different. The first issue is whether it was intended that the party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as at para. 51 (4) and (5) above.”

42. In our courts, I find in the judgment of Miss Justice Edwards in **Hinds v. Wilmot** [supra] a sufficiently succinct statement of the applicable principles to be adopted and applied at paragraph 10 to 13 inter alia:

[10] “Where a person in whom the legal title to land is not vested claims an interest in the said land, he must prove that the one in whom the legal title is vested, holds it as trustee for his beneficial interest. This is the English Law of trust and the principles are applicable to this jurisdiction. Such a trust may be a constructive or a resulting trust.

[11] In the case of a resulting trust, where two (2) persons contribute to the purchase of a property and

the purchase is made in the name of one only, there is a presumed common intention that the party whose name title is vested holds the property on resulting trust for both of them in proportion of their respective contribution of Viscount Dilhore in **Gissing v. Gissing [1971] AC 886.**

[12] In the case of a constructive trust, this arises where at any time two or more persons have a common intention, expressed or implied by words or conduct, that one or more is to have a specific share in the property or an uncertain share to be ascertained in due course according to their contributions; so inducing that person(s) to act to their detriment on the reasonable belief that they are thereby acquiring the agreed interest: See **Grant v Edwards (1986) 2 All ER 427.....**

[13] The detriment or prejudice to one party makes it unconscionable for the other to deny him an interest in the property under an expressed or inferred declaration of trust. He will then get what is agreed: See **Re Densham (1975) 3 All ER 726.....** He may also rely on a constructive trust where he paid for capital improvements or carried out building work himself. However equity will not assist a volunteer."

Applying the law to the facts

43. The claimant is denying that she at any time intended for the defendant to have any interest in her property. The question then becomes whether there is any credible evidence to the contrary. In his evidence the defendant is asserting that it was shortly after the relationship began that she, upon learning of his profession told him of her ownership of a piece of land which she was never able to save enough to build on. He said shortly thereafter they started to plan a future together and in exchange for his using his NHT contributions as capital and his standing guarantor for a loan, once his divorce was finalized she would add his name to the title. Further he said she told him that if he used his skills

and expertise as an engineer and contractor to assist her, she would put his name as a joint owner of the property.

44. Given that she flatly denies that any such conversation took place, the question now resolves around the issue of credibility. She concedes that at the time their relationship began she had not yet secured mortgage financing to build what she considered would be her dream house. She seemed to have already visualized what the house would be like and already commenced getting the requisite drawings to bring her dreams into reality. Would she then have committed to making a man she had just began a relationship with, who was still married, such an integral part of her future to promise him joint ownership of her dream house?
45. In assessing the demeanour of the parties, I find it somewhat curious that it was against this background from so early in the relationship, without seeing whether his assistance would amount to much or if he would assist in repaying the loan used to construct the house, that this claimant could have made such a promise.
46. He has now come to assert that he was used. She does not really deny this but felt that given the nature of their relationship, she was merely accepting this assistance of her boyfriend in achieving her dream with no thought, concretely, as to what the future would bring. She did, I find rely on him and benefit greatly from his assistance.
47. The defendant is saying in effect that the court should have no need to infer anything from their course of dealings and conduct in the construction of the house. It is his assertion that she made a promise which can now be enforced. It is on that promise that he is asking the court to determine what their common intention was.

48. It is on that promise that he relied when he did all he did, - he used his time, his talent and his treasure because as he expressed it he believed a person's word was their bond. If it is to be believed that there was this promise, all he had to do to benefit while the relationship was still subsisting was to get a divorce from his wife from whom he had been separated from 1998. The terms of the initial promise did not require that he marry the claimant. All he had to do to become joint owner after assisting her to build the house, was to get a divorce. There is no real explanation offered as to why he did not pursue the divorce until 2008 – other than he was waiting for his wife to divorce him.
49. It is therefore redundant to consider whether his contributions, financial or otherwise, were sufficient to give him an interest in the property. Indeed, given what is the final estimated value of the house which was not challenged by the defendant, his contribution would not amount to what could be considered a significant portion. In any event the loan was for \$3,150,000.00 and the final value of the house was ten times. Further, it was she who nevertheless paid back the majority of the monies which had been borrowed to build the house. There is no agreement as to what portion he paid but at most on his estimate it was six (6) to nine (9) months. However, one must bear in mind that he is placing his claim for an interest in the house in his assertion that she promised him that his name would be added to the title regardless of his financial assistance.
50. This is also not a case where there was any pooling of resources or any joint actions for any common purpose eg. - opening a joint account. The defendant certainly accepted a risk in lending his name as guarantor for a loan to facilitate the construction. However, the fact is that he does not challenge that she eventually paid the substantial sums in repaying the loan and his reliance on acquiring a beneficial interest in this house cannot stem from this issue. It is

the promise made which, seemingly underpins these factors, that he continually asserts as forming the basis for his claim.

51. The defendant also made mention of the fact that it was this promise that was one of the considerations in his divorce settlement. He had decided that since they were building a house for their future together he would give his wife the matrimonial home. However, this is one area where the credibility of the defendant is most suspect. Under cross-examination he admitted that he and his ex-wife owned a premises together in Portmore but he did not live there at any time, hence there does not seem to have been any real matrimonial home.
52. He also admitted under cross-examination that before the actual divorce proceedings he had told his ex-wife that he was not interested in claiming anything in that house and this he said was from 1998 or 1999. It is therefore somewhat difficult to see how he now asserts that part of his reason for giving his ex-wife the matrimonial home as part of his divorce settlement in 2008 was that he was building a house with the claimant. The giving of any home to his ex-wife seems to have occurred from even before he and the claimant had even met.
53. There is in effect only one document which could prima facie be viewed as indicative of his interest in the completed house. This was a document he prepared. He said it was prepared when he came to realize that she had no intention of adding his name to the title. This was signed by her; she claimed it was as a result of pressures and demands from him. The document sought to put a value on the services he had facilitated. Although he had prepared it he said it devalued his contributions. It is significant that this document was prepared and signed on January 7, 2009 after the decree nisi had already been obtained from August the year before. The absolute was received approximately two (2) weeks later on January 19. Certainly at this time he would have been

aware that he would soon be able to comply with what had been demanded of him in order for her to keep the promise. The document is silent as to any interest he was to have in the house. It made no mention of the fact that his name was to be placed on the title. On his account it was not until October of that year that she really began to pressure him to marry her. It was then that he said she told him he was to move out as she had become a Christian and could no longer continue in the relationship the way it was.

54. The sum total of this analysis of the significance of this document is that, given that it was prepared by him at a time when there is no allegation of any problems between them as far as he was concerned, the question which arises is why there is no reference to the promise that was alleging made. The document is to be accepted for what it purports to be and that is to put a dollar value on the confirmed services facilitated by the defendant.
55. In conclusion, after a careful analysis of the relevant evidence and an equally careful assessment of the credibility of the parties; on the balance of probabilities, there is no satisfactory evidence that there was an agreement that the defendant would have any beneficial interest in the property. I reject the defendant's assertion that there was any promise made capable of amounting to an agreement that the property would be owned by both of them.
56. The order therefore is that:
 - (1) The Notice of application dated the 6th of May 2010 filed by the defendant is dismissed.
 - (2) There is judgment for the claimant as follows:
 - (a) It is hereby declared that the claimant is the fee simple owner and is entitled to sole possession of all that parcel of land situate at 3 Aguilar Road, Kingston 9 in the parish of St. Andrew registered at Volume 1249 Folio 749 of the Register Book in the Office of Titles.

(b) Cost to the claimant to be taxed if not agreed.