[2019] JMSC Civ 17

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2016 HCV 00630

BETWEEN	**HORACE BOSWELL**	**CLAIMANT**
AND	**JENNIFER JOHNSON**	**DEFENDANT**

IN CHAMBERS

Mr. Hopeton Henry and Miss Kimberly Taylor for the Claimant

Miss Olivia Derrett instructed by Messrs. Oswest Senior-Smith & Co. for the Defendant

Heard: September 20, 2018 and February 7, 2019

Equity – Constructive and resulting trusts – Tenants in common – Whether the claimant is entitled to a greater interest in land than that endorsed on registered title

A. NEMBHARD, J (AG.)

INTRODUCTION

[1] This matter concerns the property rights of the Claimant, Mr. Horace Boswell and the Defendant, Miss Jennifer Johnson, in the property located at Lot 5, White River in the parish of Saint Ann, being the land comprised in Certificate of Title registered at Volume 1172 Folio 45 of the Register Book of Titles, ("the subject property"). Mr. Boswell and Miss Johnson acquired the subject property together, which is registered in their joint names as tenants in common, in equal shares.

[2] Mr. Boswell and Miss Johnson have an obvious interest in the determination of their respective property rights in such a valuable asset. The issue between them is, however, also a matter of general public interest. It has become an increasingly pressing social problem, as house prices increase and more and more, people are living together without getting married. The situation is complicated by the fact that there is no single, or paradigm, set of circumstances. The only feature which these cases have in common is that the problem is not solved by legislation. The legislation which enables the Court to reallocate beneficial interests in the home and other assets following a divorce does not apply to cohabiting couples.

[3] The key to simplifying the law in this area lies in the identification of the correct starting point. Traditionally, English law has always distinguished between legal ownership in land and its beneficial ownership. The trust under which the land is held will determine the extent of each party's beneficial ownership. The cases can be broken down into those where there is a single legal ownership and those where there is joint legal ownership. The Court must decide where the onus lies if a party wishes to show that the beneficial ownership is different from the legal ownership.

[4] In this matter the starting point would be joint beneficial ownership. In this context 'joint beneficial ownership' means that the shares are presumed to be divided between the beneficial owners equally. So, in a case of sole legal ownership the onus is on the party who wishes to show that he has any beneficial interest at all, and if so, what that interest is. In a case of joint legal ownership, it is on the party who wishes to show that the beneficial interests are divided other than equally.

BACKGROUND

[5] By way of an amended Fixed Date Claim Form, dated and filed on 8 January 2018, the Claimant, Mr. Horace Boswell, seeks the following Orders against the Defendant, Miss Jennifer Johnson: -

(1) That the property located at Lot 5, White River in the parish of Saint Ann registered at Volume 1172 Folio 45 of the Register Book of Titles in the names of the Claimant and Defendant as tenants in common in equal shares be deemed as being held on constructive trust by the Defendant on behalf of the Claimant;

(2) That the Claimant is entitled to no less than 80% legal and beneficial interest in the abovementioned property;

(3) That the Court determines the proportion of the interest owned by the Claimant and the Defendant in the said property;

(4) That the said property be valued by an approved Valuator agreed upon by the Claimant and the Defendant;

(5) That in the event that a Valuator cannot be agreed upon within fourteen (14) days, then Excelsior Realty Limited be appointed as Valuator;

(6) That, upon determination of the market price of the property, the Claimant be allowed to pay the Defendant for her interest therein as determined by the Court;

(7) That the Defendant shall transfer her interest in the abovementioned property to the Claimant;

(8) That, in the alternative, the property be sold and both parties receive the percentage share as determined by this Honourable Court;

(9) That the Registrar of the Supreme Court be empowered to sign all documents necessary to effectuate the Court's Order herein in the event that either party refuses or neglects to do so by the relevant Attorney-at-Law;

(10) Such other relief as this Honourable Court may deem just;

(11) Such costs as are incidental to the proceedings.

[6] Mr. Boswell and Miss Johnson met in 2004 and shortly thereafter an intimate relationship ensued between them. Mr. Boswell, an Electronic Technician, is a permanent resident of Canada, while Miss Johnson, an Office Administrator, is a permanent resident of Jamaica.

[7] In the initial stages of their relationship, Mr. Boswell, on his visits to Jamaica, would stay with Miss Johnson in her leased apartment. Shortly thereafter, Mr. Boswell and Miss Johnson decided to purchase the subject property. The subject property was being sold for Eight Million Dollars ($8,000,000.00) and was financed by way of a mortgage obtained from the Jamaica National Building Society ("JNBS") in the sum of Six Million Dollars ($6,000,000.00) and a loan obtained from the National Housing Trust ("NHT"), in the sum of One Million Two Hundred Thousand Dollars ($1,200,000.00). Mr. Boswell contributed the required deposit in the sum of Eight Hundred Thousand Dollars ($800,000.00).

[8] The subject property is registered in the names of Mr. Boswell and Miss Johnson, as tenants in common in equal shares.

[9] Miss Johnson effected repairs to the subject property with the financial assistance of Mr. Boswell.

[10] A few years later, Miss Johnson leased the first floor of the subject property for the sum of Twenty-Eight Thousand Dollars ($28,000.00), per month. Miss Johnson subsequently used the proceeds of the rent to assist in paying her share of the mortgage.

THE CLAIMANT'S CASE

[11] Mr. Boswell contends that, although the subject property is registered in the names of himself and Miss Johnson, as tenants in common in equal shares,

he merely caused her name to be added to the Certificate of Title "for the reason that he loved and trusted her and believed that out of convenience it was necessary for such addition to be made as he does not reside in Jamaica."

[12] Mr. Boswell contends further that there was no mutual intention between himself and Miss Johnson that they should own the subject property jointly. Rather, the subject property was purchased with the primary intention of providing him [Mr. Boswell] with a place stay on those occasions when he visited Jamaica.

[13] Mr. Boswell asserts that Miss Johnson was merely allowed to occupy the subject property as they were in a relationship and that he thought it best "for safety and security reasons to have someone occupy the property." During the trial of the matter, Mr. Boswell testified that he intended to use the subject property as a bed and breakfast and that this intention was communicated to Miss Johnson.

[14] Mr. Boswell stated that he sent Miss Johnson money, via Western Union, which she was to have used to make the monthly mortgage payments of between Forty-Eight Thousand Dollars ($48,000.00) and Fifty-Five Thousand Dollars ($55,000.00). He did this until June of 2014, when he was informed by JNBS that the mortgage was in arrears.

[15] Mr. Boswell denied that Miss Johnson provided any NHT contributions towards the acquisition of the subject property, as was initially agreed between them. He contends that Miss Johnson was unemployed at the time of the purchase of the subject property and that by virtue of her unemployment she would not have been able to provide any such contributions.

[16] In addition to financing the monthly mortgage payments, Mr. Boswell asserts that he also financed the renovation and upkeep of the subject property. It is his contention that, by virtue of his providing the deposit towards the purchase of the subject property, his financing the renovations to and general upkeep of

the subject property, as well as, his financing the monthly mortgage payments in respect of the subject property, the interest endorsed on the Certificate of Title in Miss Johnson's favour, is held on trust in his favour.

[17] Furthermore, Mr. Boswell contends that Miss Johnson should be made to account for any and all income generated from the rental of the subject property and that the income so generated should be shared between them.

THE DEFENDANT'S CASE

[18] In response to the amended Fixed Date Claim Form, Miss Johnson contends that she is entitled to a one-half share of the legal and beneficial interest in the subject property. The gist of her case is captured and summarized as follows. Miss Johnson stated that she was always desirous of acquiring a home and strategized that she would use her NHT benefits, as well as her savings, to acquire same. She communicated this desire to Mr. Boswell, who encouraged the idea and advised her that when she found the property that she liked, he would assist her to purchase it.

[19] Miss Johnson discovered that the subject property was for sale and brought that fact to Mr. Boswell's attention. She further contends that it was their intention that each of them should benefit equally from the subject property.

[20] Miss Johnson asserts that herself and Mr. Boswell obtained a mortgage from JNBS and that she assisted by providing her NHT contributions, which were used towards the acquisition of the subject property. Miss Johnson made monthly mortgage payments in the sum of Twenty-Seven Thousand Dollars ($27,000.00). The total monthly mortgage payment, in respect of the subject property, was Seventy Thousand Dollars ($70,000.00).

[21] Miss Johnson stated that she handled the arrangements that had to be made to finalize the purchase of the subject property. This included the valuation of the subject property, as well as, the handling of all communication with the vendor's Attorney-at-Law.

[22] Miss Johnson contends that the interest endorsed on the Certificate of Title in respect of the subject property, conforms with the mutual intention of herself and Mr. Boswell. She denies that her name was added to the Certificate of Title as a matter of convenience because Mr. Boswell did not reside in Jamaica. She asserts that there would have been no necessity for that to be done because she would send the documents requiring Mr. Boswell's signature to him by courier. These documents Mr. Boswell would sign and return to her.

[23] Miss Johnson further contends that subsequent to the completion of the sale of the subject property, she began to repair it. This included building and maintaining a garden on the subject property, enclosing the subject property and planting hedges, flowers and various fruit trees on the subject property. She did most of this work herself and only hired help to do the landscaping and to cut the grass. Miss Johnson maintains that she added several fixtures to the subject property. These include installing a kitchen sink, fixing cupboards, painting and maintaining the structure of the subject property and undertaking repairs to its roof, after the passage of a major hurricane.

[24] Now that she is retired, Miss Johnson uses the income generated from the rental of the subject property to assist her to make her monthly mortgage payments.

[25] Finally, Miss Johnson contends that she has relied on the understanding between herself and Mr. Boswell, that the subject property is to be held by each of them in equal shares and further, that she has treated with the subject property in that context.

THE ISSUES

[26] The following are identified as the issues for the Court's consideration: -

(a) Is Mr. Boswell entitled to an eighty percent (80%) share of the legal and beneficial interest in the subject property?

(b) Where does the burden of proof lie?

(c) What was the intention of the parties before and/or at the time of the acquisition of the subject property?

(d) Is Mr. Boswell entitled to a share of the income generated from the rental of the subject property?

THE LAW

The indefeasibility of a registered Title

[27] Section 68 of the Registration of Titles Act ("the Act") provides as follows: -

> **"***No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power."*

[28] This section establishes the principle of the indefeasibility of a registered Title. There are some instances, however, in which the Court may look behind the Certificate of Title. One such instance is where it is proven that the land is being held on trust for the rightful beneficial owner.

Constructive trusts

[29] A constructive trust arises in respect of the acquisition of land whenever it is shown (i) that the apparent common intention of the person in whom the legal estate is vested (the legal owner) and the person claiming a beneficial interest in the land (the claimant) was that the claimant should have a beneficial interest in the land and (ii) that the claimant has carried out acts in reliance on that apparent common intention of such a substantial nature and so referable

to the acquisition, renovation or improvement of the property, as to render it inequitable to deny the claimant his or her intended interest.

[30] In **Halsburys Laws of England**, (2019), Volume 98, paragraph 114, it is stated as follows: -

> *"A constructive trust attaches 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."*

[31] Deane J, in **Muschinski v Dodd** (160) C.L.R. 583, described the constructive trust as follows: -

> *"In its basic form the constructive trust was imposed as a personal obligation attaching to property, to enforce the equitable principle that a legal owner should not be permitted to use his common law rights as owner to abuse or subvert the intention which underlay his acquisition and possession of those rights. This was consistent with the traditional concern of equity with substance rather than form. In time, the relationships in which the trust was recognised and enforced to protect actual or presumed intention became standardised and were accepted into conveyance practice…Viewed in its modern context, the constructive trust can properly be described as a remedial institution (and subsequently protects) to preclude the retention or assertion of beneficial ownership of property to the extent that such retention or assertion would be contrary to equitable principle."*

[32] It is not necessary to the creation of a constructive trust in respect of the acquisition of land for the claimant to show that the common intention of the claimant and the legal owner was that the claimant would acquire an interest only if he or she acted in a certain way and that the claimant had acted in the agreed way in order to acquire that interest. That analysis would state the law too narrowly. (See – **Lloyds Bank Plc. v Rosset and Another** [1991] 1 AC 107.)

Resulting trusts

[33] According to renowned jurist, Gilbert Kodilinye, in his text Commonwealth Caribbean Law of Trusts, 3rd edition, at page 103: -

> *"Resulting trusts are so called because in them the beneficial interest 'results', that is to say, goes back to the settlor. They differ from express trusts in that:*
> *(a) they arise from the implied or presumed intention of the settlor and not from his express words;*
> *(b) their creation does not depend upon formalities such as writing;*
> *(c) their objects do not need to be immediately identifiable; and*
> *(d) a minor may not be an express trustee, but he can be a resulting trustee."*

[34] Gibbs C.J., in **Muschinski v Dodd** (supra), restated the equitable rules that created a resulting trust in this way: -

> *"Where, on a purchase, a property is conveyed to two persons, whether as joint tenants or as tenants in common, and one of those persons has provided the whole of the purchase money, the property is presumed to be held in trust for that person, to whom I shall, for convenience, refer as "the real purchaser." However, a resulting trust will not arise if the relationship between the real purchaser and the other transferee is such as to raise a presumption that the transfer was intended as an advancement, or in other words a presumption that the transferee who had not contributed any of the purchase money was intended to take a beneficial interest...*
>
> *However, the presumption that there is a resulting trust may be rebutted by evidence that in fact the real purchaser intended that the other transferee should take a beneficial interest. Where both transferees have contributed the purchase money, the intentions of both are material, but where only one has provided the purchase money it is his or her intention alone that has to be ascertained. The evidence admissible to establish the intention of the real purchaser will comprise "the acts and declarations of the parties before or at the time*

> *of the purchase ... or so immediately thereafter as to constitute a part of the transaction".*

[35] Therefore, where there are a number of purchasers of any disputed property, the law assumes that, in the absence of evidence to the contrary, the multiple purchasers hold the beneficial interest in proportion to each purchaser's contribution to the purchase price. This is the case whether or not the purchaser's name appears on the Title.

[36] The pronouncement of Gibbs C.J. also reinforces the principle that, where a party does not contribute to the acquisition of property, in general, he has no legal or beneficial interest in the property. Consequently, when one wishes to determine if a resulting trust exists, it is the intention of the settlor that is of significance.

[37] In **Pettitt v Pettitt** [1969] 2 W.L.R. 966, at page 990 B-C, Lord Upjohn stated as follows: -

> *"It is far more likely to be solved by the doctrine of resulting trust, namely, that in the absence of evidence to the contrary, if the property be conveyed in the name of a stranger he will hold it as trustee for the person putting up the purchase money and if the purchase money has been provided by two or more persons the property is held for those persons in proportion to the purchase money that they have provided."*

[38] **Pettitt v Pettitt** (supra) also establishes that, generally, where a husband acquires property in the name of his wife, the law presumes that the property was intended to be a gift to her. If he acquires property in both their names, the presumption is that he intends for them to share the property equally.

[39] This presumption may be rebutted if there is evidence to show a contrary intention in acquiring the property in the name of the wife.

[40] Lord Diplock, in **Gissing v Gissing** [1970] 3 W.L.R. 255, at page 267 E-F stated as follows: -

> *"A resulting, implied, or constructive trust – and it is unnecessary for present purposes to distinguish between these three class of trust – is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever 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 the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."*

[41] In the latter case of **Lloyds Bank Plc. v Rosset and Another** (supra), Lord Bridge of Harwich, at page 132 F-G, provided more clarity in relation to the finding of an agreement between the parties. He stated as follows: -

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

[42] At pages 132 G – 133 A, Lord Bridge of Harwich continued to state: -

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

constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do."

The current approach

[43] In 2007, the House of Lords, in **Stack v Dowden** [2007] 2 All ER 929, laid down the relevant principles in relation to this area**.** An exploration of the facts of the case is instructive. Mr. Stack and Ms. Dowden first began to live together in 1975, when they were teenagers. In 1983 Ms. Dowden had the opportunity to buy a house (in Purves Road) as a result of the wish expressed by a deceased relative. The house was conveyed into her sole name. She paid the deposit of £8,000 out of an account into which some monies had been contributed by Mr. Stack. She took out a mortgage for the balance of the purchase price of £22,000. She made all the payments under the mortgage and paid all the outgoings.

[44] The couple lived at this house and there they raised three children. Mr. Stack did a substantial amount of work to the property, but these improvements were not valued.

[45] In 1993, this house was sold. The parties bought a second property in Chatsworth Road which was transferred into the parties' joint names. The form of transfer contained no declaration of trust but stated that the survivor could give a valid receipt of the capital monies arising from the sale of the property. The purchase price was £190,000, of which, approximately two-thirds came from the building society account of Ms. Dowden. The proceeds of sale of the house in Purvis Road had been paid into that account. The balance of the purchase price was provided by a loan secured by a mortgage and two endowment policies. One of these policies was in the parties' joint names and one in the name of Ms. Dowden alone.

[46] Ms. Dowden paid the mortgage interest and the premiums due under the endowment policy held in their joint names. She therefore paid approximately £34,000. The mortgage loan was repaid by a series of lump sum payments. Mr. Stack contributed £27,000 to these and Ms. Dowden, £38,435. Ms.

Dowden also paid the premiums on the endowment policy in her name. She further paid all the outgoings and all the other household expenses. Her income was at times twice as much as that of Mr. Stack. Throughout this time, the parties kept separate bank accounts and made a series of separate investments and savings.

[47] In 2002, the parties separated. The trial judge held that the parties were entitled to the proceeds of the sale of the house in Chatsworth in equal shares. The Court of Appeal held that the proceeds of the sale should be divided 35% to Mr. Stack and 65% to Ms. Dowden.

[48] The Court of Appeal examined the whole course of dealing between the parties in relation to the property and held that that was the fair result.

[49] At paragraph [59], Baroness Hale, in the delivering the judgment of the House of Lords, stated that where property was put into joint names, the starting point for the Court in its consideration of the issues, was joint beneficial ownership. The onus was on the person seeking to show that the beneficial ownership was different from the legal ownership.

[50] At paragraph [61], Baroness Hale opined that it was preferable to ask what shares were intended rather than what was fair. She gave the following two reasons: -

> *"First, it emphasises that the search is still for the result which reflects what the parties must, in light of their conduct, be taken to have intended. Second, therefore, it does not enable the court to abandon that search in favour of the result which the court itself considers fair. For the court to impose its own view of what is fair upon the situation in which the parties find themselves would be to return to the days before Pettitt v Pettitt [1970] AC 777…"*

[51] In considering the whole course of conduct between the parties, the Court, at paragraphs [86]- [89], considered the following: -

(a) The fact that the purchase price of the property was One Hundred and Ninety Thousand Pounds (£190,000). Of that sum, One Hundred and Twenty-Eight Thousand

Eight Hundred and Thirteen Pounds (£128,813) came from Ms. Dowden's account. The remaining Sixty-Five Thousand and Twenty-Five Pounds (£65,025) were provided by way of a loan to the parties from a bank. This loan was secured by a mortgage and two endowment policies, one in their joint names and the other in Mr. Stack's name only;

(b) The mortgage loan and joint endowment policy premiums were paid by Mr. Stack;

(c) The mortgage loan was repaid by a series of lump sum payments. Mr. Stack contributed Twenty-Seven Thousand Pounds (£27,000) and Ms. Dowden contributed Thirty-Eight Thousand Four Hundred and Thirty-Five Pounds (£38,435) towards those repayments; and

(d) The utility bills were all in Ms. Dowden's name, although Mr. Stack claimed to have paid some of those.

[52] Baroness Hale, at paragraph [90], also considered the context provided by the nature of the parties' conduct and attitude towards their property and finances. She found that although the parties were in a relationship for over thirteen (13) years, they still managed to keep their finances separate. This factor, and those mentioned above, the Court found were strongly indicative that the parties did not intend their respective shares in the property, which was registered in both their names, to be equal.

[53] Lord Hope of Craighead in **Stack v Dowden** (supra), at page 934, paragraph [3], recognized the nature of cohabiting relationships. He stated as follows: -

"...cohabiting couples are in a different kind of relationship. The place where they live together is their home. Living together is an exercise in give and take, mutual co-operation and compromise. Who pays for what in regard to

> *the home has to be seen in the wider context of their overall relationship. A more practical, down-to-earth, fact-based approach is called for in their case."*

[54] Baroness Hale also noted that the interpretation to be applied to people living in an intimate relationship may be different from that to be applied to similar behaviour between commercial men. She added further that, an outcome that may seem just in a purely commercial transaction, may appear highly unjust in a transaction between husband and wife or cohabitants.

Equitable accounting

[55] Following a finding of the existence of a trust in the circumstances of any given case, the Court may consider consequential Orders, such as an Order that an equitable accounting be done.

[56] In **Collete Murphy v Ian Gooch** [2007] 2 FLR 934, Justice Lightman stated, at paragraph [10], as follows: -

> *"…where it is just to do so, co-owners may be given credit for moneys paid and expenditure incurred on the jointly-owned property, a co-owner in sole occupation of the property may be charged with or required to give credit to his co-owner for an occupation rent and these credits may be offset against each other*."

ANALYSIS

[57] Mr. Boswell and Miss Johnson are registered owners of the subject property, which they hold as tenants in common in equal shares. By way of an amended Fixed Date Claim Form, dated and filed on 8 January 2018, Mr. Boswell seeks an Order that the subject property has been held on trust with an 80% legal and beneficial interest in his favour. The starting point therefore, is that of joint beneficial ownership. The burden of proof lies on Mr. Boswell to prove, on a balance of probabilities, that the beneficial interests are divided other than equally, as indicated on the registered Title.

[58] In its consideration of the issues arising in this matter, the Court has had regard to the pronouncements made in **Stack v Dowden** (supra). The Court

must determine the parties' shared intentions, actual, inferred or imputed, with respect to the subject property, in the light of their whole course of conduct in relation to it.

[59] There is no evidence before the Court of any actual discussions between Mr. Boswell and Miss Johnson, capable of supporting a finding of an express agreement or arrangement between them as to how each is to benefit from the subject property. Where there is no evidence to support a finding of an express agreement or arrangement to share, the Court must rely entirely on the conduct of the parties, both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation, direct contributions to the purchase price by one of the parties, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust.

[60] It is agreed between the parties that their relationship commenced in 2004 and continued to about 2012. It is also agreed that during the span of that relationship, Mr. Boswell resided in Canada and visited Jamaica once per year, for approximately two weeks.

The intention to acquire property

[61] Miss Johnson contends that she had always wanted to own a home and that she had been saving for years towards this goal. She indicates that, when she told this to Mr. Boswell, he encouraged her and offered his assistance, when that time should come. On the other hand, Mr. Boswell contends that there was no intention to acquire the subject property jointly, as he intended to use the subject property as a bread and breakfast, as well as for his own accommodation when he was in Jamaica. The Court observes that Mr. Boswell's assertion in this regard is not stated in any of the affidavits that form part of his evidence and is stated for the first time in cross examination.

[62] It is agreed between the parties that it was Miss Johnson who discovered the subject property and that it was being sold. It is also agreed between the parties that, having identified the subject property, Miss Johnson brought it to Mr. Boswell's attention. This is indicative of an intention that both parties would acquire the subject property but it sheds no light on the interest to be held by each of them.

The acquisition

[63] It is not disputed that the initial deposit for the subject property was provided by Mr. Boswell only. He contends that there was an initial understanding between himself and Miss Johnson that, while he would contribute the initial deposit, Miss Johnson would use her NHT benefits towards the acquisition of the subject property and further, that she would make the monthly mortgage payments in respect of the loan obtained from NHT.

[64] There has been no documentary evidence provided by Miss Johnson to corroborate her assertion that she used her NHT benefits in the acquisition of the subject property. However, in light of the fact that the subject property was valued at Eight Million Dollars ($8,000, 000.00), Six Million Dollars ($6,000,000.00) of which were obtained from JNBS, the remaining One Million Two Hundred Thousand Dollars ($1,200,000.00) could reasonably be inferred to have been funded by Miss Johnson's NHT contributions. Mr. Boswell himself concedes this. It can therefore be said that both parties contributed to the acquisition of the subject property.

[65] Miss Johnson's NHT benefits amount to fifteen percent (15%) of the total cost of acquiring the subject property. This is a factor that the Court can properly consider, in seeking to determine the intention of the parties.

The mortgage payments

[66] Mr. Boswell asserts that his monthly mortgage payments, in respect of the subject property, amounted to between Forty-Eight Thousand Dollars ($48,000.00) and Fifty-Five Thousand Dollars ($55,000.00). This sum of money would be sent to Miss Johnson, with the understanding that she would

make the payment. In an effort to prove this assertion, Mr. Boswell has produced in evidence documents that corroborate his evidence in this regard. The Court accepts this evidence. Miss Johnson's evidence is that the total monthly mortgage payment in respect of the subject property amounted to Seventy Thousand Dollars ($70,000.00), of which she was responsible for paying Twenty-Seven Thousand Dollars ($27,000.00).

[67] The Agreement for Sale in respect of the subject property, was completed in early 2008. Miss Johnson has produced in evidence receipts which indicate that monthly mortgage payments began in July 2014. Mr. Boswell indicates that this was about the time when he stopped sending money directly to Miss Johnson. Miss Johnson testified that she has no other receipts showing the payment of mortgage. In the absence of any evidence in this regard, the Court finds that Miss Johnson has failed to prove that she has complied with the agreement between herself and Mr. Boswell, in respect of the ownership of the subject property.

[68] In any event, on Miss Johnson's account, Mr. Boswell would be responsible for contributing Fifty-Three Thousand Dollars ($53,000.00), while she would contribute Twenty-Seven Thousand Dollars ($27,000.00), towards the monthly mortgage payments in respect of the subject property. This disparity between the amount that each party was to pay towards the mortgage, as well as, Mr. Boswell's sole contribution towards the deposit, the Court finds, is not indicative of an agreement between the parties that each was entitled to an equal share in the subject property.

Subsequent renovation

[69] Miss Johnson asserts that since the acquisition of the subject property, she has effected various repairs to it and has renovated it. Mr. Boswell accepts this assertion but maintains that these repairs and renovations were financed by him. This assertion has not been challenged by Miss Johnson.

[70] It is Mr. Boswell's contention that Miss Johnson's name was added to the Certificate of Title for the subject property out of mere convenience, because

he was resident abroad and because of his love for her. Miss Johnson, on the other hand, asserts that there was no need for that to be done because she ensured that the documents requiring Mr. Boswell's signature were sent to him.

[71] The Court accepts Miss Johnson's evidence in this regard but finds that the fact of adding Miss Johnson's name to the Certificate of Title, in light of the whole course of conduct between the parties in respect of the subject property, does not demonstrate a mutual intention between them that each would benefit equally from the subject property.

[72] This Court is of the view that, although Miss Johnson's whole course of conduct in respect of the subject property indicates that she has some interest in the subject property, it is not sufficient to demonstrate that she is equally entitled with Mr. Boswell.

CONCLUSION

[73] In concluding, the Court finds that it is impossible to ignore the fact that the contributions which the parties made to the purchase of the subject property were not equal. The relative extent of those contributions provides the best guide as to where their beneficial interests lay, in the absence of compelling evidence that by the end of their relationship they did indeed intend to share the beneficial interests equally.

[74] The Court finds that Mr. Boswell has proven, based on his conduct in relation to the subject property, that he is entitled to a beneficial interest in the subject property that is greater than the legal interest held by himself and Miss Johnson. Conversely, the Court finds that Miss Johnson has failed to prove that her conduct in the course of her dealing with the subject property, entitles her to an equal share in same.

Equitable Accounting

[75] Miss Johnson indicates that she began leasing a section of the subject property in 2014 and used the rental income to pay her portion of the

mortgage. In those circumstances this Court is of the view that the proceeds of the rental income are to be shared between the parties in the percentages indicated below.

DISPOSITION

[76] It is hereby ordered that: -

(1) The property located at Lot 5, White River in the parish of Saint Ann being the land comprised in Certificate of Title registered at Volume 1172 Folio 45 of the Register Book of Titles in the names of the Claimant, Horace Boswell and the Defendant, Jennifer Johnson, as tenants in common in equal shares, is declared to be held on constructive trust by the Defendant, Jennifer Johnson, on behalf of the Claimant, Horace Boswell;

(2) The Claimant, Horace Boswell, is declared to have an 80% legal and beneficial interest in the said property;

(3) The Defendant, Jennifer Johnson, is declared to have a 20% legal and beneficial interest in the said property;

(4) The said property is to be valued by Cohen & Cohen Realty, as agreed on by the Claimant, Horace Boswell, and the Defendant, Jennifer Johnson, within 42 days of the date hereof. The cost of the Valuation Report is to borne by the Claimant and the Defendant in the percentage of their respective share in the said property, as has been determined by this Honourable Court;

(5) Upon a determination of the market value of the said property, the Claimant, Horace Boswell, has the first option to purchase the Defendant's, Jennifer Johnson's, share in the said property, as has been determined by this Honourable Court;

(6) Should the Claimant, Horace Boswell, fail to execute an Agreement for Sale, in exercise of the option to purchase pursuant to paragraph (5) of this Order, within 180 days of the date hereof, then the Defendant, Jennifer Johnson, shall be at liberty to purchase the Claimant's interest in the said property, as has been determined by this Honourable Court;

(7) Should the Defendant, Jennifer Johnson, fail to execute an Agreement for Sale, in exercise of the option to purchase pursuant to paragraph (6) of this Order, within 360 days of the date hereof, then the said property is to be sold on the open market and the net proceeds of the sale are to be shared between the Claimant, Horace Boswell and the Defendant, Jennifer Johnson, in the percentage of their respective share in the said property, as has been determined by this Honourable Court;

(8) The Registrar of the Supreme Court is empowered to sign all documents necessary to give effect to the Orders made herein in the event that either party refuses or neglects to do so, either by himself or by his Attorney-at-Law;

(9) Within 120 days of the date hereof, the Defendant, Jennifer Johnson, is to provide the Claimant, Horace Boswell, and/or his Attorneys-at-Law, with an accounting of the rental income generated from the rental of the said property during the period 2014 to 7 February 2019;

(10) Within 180 days of the date hereof the Defendant, Jennifer Johnson, is to pay to the Claimant, Horace Boswell, 80% of the rental income generated from the rental of the said property during the period 2014 to 7 February 2019;

(11) Costs to the Claimant to be taxed if not sooner agreed;

(12) Liberty to apply;

(13) The Claimant's Attorneys-at- Law are to prepare, file and serve the Orders made herein.