IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV00795

BETWEEN	**SIMONE GRANT**	**CLAIMANT**
AND	**DENISE FORREST**	**DEFENDANT**

IN CHAMBERS

Mrs. Annaliesa Lindsay for the Claimant

Mrs. Tamara Francis-Riley Dunn instructed by Nelson-Brown, Guy and Francis for the Defendant.

Heard: June 20, 2023, July 11, 2023 & October 30, 2023.

Equity – Constructive and Resulting Trusts, Proprietary Estoppel – Joint Tenancy- one joint tenant is deceased – whether joint tenancy severed by separate acts of the joint tenants – whether tenancy severed by course of conduct.

O. SMITH, (AG.)

INTRODUCTION

[1] On March 3, 2021, the claimant, Ms. Simone Grant filed a Fixed Date Claim Form (FDCF) seeking the following orders:

(1) A declaration that the joint tenancy ownership of premises located at Townhouse 4, Knightsbridge Manor, 41 Kings House Avenue, Kingston 6 registered at Volume 1392 and Folio 154 of the Register Book of Titles,

between the deceased, Micheal Forrest and the Defendant, Denise Forrest, was severed prior to the death of Micheal Forrest.

(2) A Declaration that the fifty percent (50%) interest in the premises located at Townhouse 4, Knightsbridge Manor, 41 Kings House Avenue, Kingston 6 registered at Volume 1392 and Folio 154 of the Register Book of Titles falls to the Estate of Michael Forrest and his lawful beneficiaries as a result of the severance.

(3) Alternatively, that the claimant has a proprietary and equitable legal interest in the said property as a result of monies expended over the years towards its purchase, through mortgage payments made by the claimant.

(4) An injunction to prevent the Defendant either by herself or her servants/and or agents from settling or otherwise disposing of or transferring the said premises located at Townhouse 4, Knightsbridge Manor, 41 Kings House Avenue, Kingston 6 registered at Volume 1392 and Folio 154 of the Register Book of Titles to any person other than the Claimant and/or her nominee.

(5) Costs

(6) Such further, consequential or other Order as this Honourable Court deems just.

FACTS

[2] Ms. Grant and the deceased, Micheal Forrest, were in a relationship. They eventually moved into Townhouse 4, Knightsbridge Manor, 41 Kings House Avenue, Kingston 6 registered at Volume 1392 and Folio 154 of the Register Book of Titles (the subject property). They lived together as man and wife in the property until sometime in 2019 when Mr. Forrest became ill and was hospitalised in the Tony Thwaites Wing of the University Hospital of the West Indies.

[3] On the 21st of December 2019, the defendant, Denise Forrest, who is the sister of the deceased visited him at the hospital and took instructions from in him in relation to the drafting of his Will. Ms. Forrest took the instructions, which included the wishes of the deceased in relation his interest in the subject property and conveyed same to his attorney.

[4] On the 27th of December 2019, the deceased signed the will in the presence of his sister.

[5] On the 16th of January 2020 the claimant and the deceased were married at the University Hospital of the West Indies.

[6] On the 17th of January 2020 Mr. Forrest passed away. Subsequently, in August of 2020, Ms. Forrest applied for a Grant of Probate in the Estate of Micheal Forrest. The Claimant filed a Caution against the application on December 18, 2020 after which the defendant withdrew the application on the 10th of May 2021.

[7] On May 12, 2021, the defendant served a Notice to Quit on the Claimant and indicated her intention to sell the property.

[8] An interim injunction was granted on August 16, 2021 and which was later discharged on October 13, 2021.

The Claimants Case

[9] Ms. Grant and the deceased, Micheal Forrest, entered into a common law relationship sometime in 2000. They moved into the subject property sometime around August 2007. She asserts that she and the deceased purchased the subject property for them to live in together as their family home. She contributed $1,000,000.00, $500,000.00 of which was by way of a loan from a mutual friend which was serviced by herself and the deceased. They purchased furniture and decorated the home together.

[10] Much of her evidence is captured under background outlined above in paragraphs 2 to 8. At the time the defendant received the instructions regarding the will the claimant was not aware of the instructions. It was the deceased who advised her that he had given his sister instructions to have his will prepared. The defendant later informed her that the deceased had left her his 50% share in the subject property. After Michael's death the will was read, the defendant who was one of the appointed Executors assured her that the family home was hers.

[11] She was always under the impression that the property was registered in Michael's name alone. However, despite the defendant assuring her that the subject property was hers shortly after Michael died the defendant told her that she intended to sell the subject property. Upon enquiry as to why the property was being sold, the defendant told her that the estate was in debt.

[12] She also discovered that the subject property had been used to secure a loan which was disbursed to the defendant. It was a loan that only Michael was repaying prior to his death from their joint funds. The defendant assured her that if she continued to service the loan, she would transfer the property to her. Consequently, she continued paying the loan. She exhibited six receipts totalling $403,000.00. According to the claimant, the defendant also agreed to transfer the house to her because she had previously benefitted from a loan of $5,000,000.00 from Sagicor which was repaid by Phoenix Lounge @ So So Seafood Limited, a business she and Michael owned.

Defendant's Case

[13] She was not aware of when her brother and the claimant began dating. However, as far as she knows her brother was engaged to one Nicole Davis in 2000 whom he married in 2001. Her brother and Nicole lived together for a while in Queensborough. On May 8, 2009 a Decree Absolute was issued terminating their marriage.

[14] The subject property was acquired by her and her brother. It was never acquired as a family home for him and the claimant. Rather, it was purchased as they intended it to be an investment property. However, she and Michael agreed that he would use it as his primary place of residence.

[15] It was she who paid the deposit of $2M. The balance of the purchase price came from a mortgage from First Caribbean International Bank in their joint names.

[16] Contrary to what the claimant averred it was she who partially furnished the subject property using furniture from her home. In addition, although the claimant lived there for twelve years, she lived there with her permission and the consent of the deceased.

[17] She admits that her brother spoke to her regarding the preparation of his Will. Based on instructions from his attorney she discussed with the deceased what his wishes were. She thereafter drafted his Will on his instructions and forwarded it to the attorney who prepared same. She took instructions from the attorney in relation to what was required to ensure that the Will was valid and carried out same.

[18] She averred that the Will did not bequeath 50% of the deceased share to the claimant, rather it bequeathed “his share” of the subject property to the claimant. Prior to attempting to probate the Will she and the other executor met with the claimant in March 2020 and went through Michaels finances.

[19] She denied ever telling the claimant that the subject property would be hers, instead, after the will was read, she advised the claimant that since the subject property was jointly held in her name and that of the deceased, the property now belonged to her. When the townhouse was acquired it was newly built and was completed with additions customized to hers and her brothers taste.

[20] She agreed that her brother took several loans on the subject property but all of them were taken with her consent. Those loans she averred have now become burdensome as she is the sole owner. In relation to the loan from NCB she denies

that the proceeds went to her., rather they went to her brother as a continuation of a loan facility used to purchase a car.

[21] She is unaware that the claimant is repaying the NCB debt solely nor did she enter any agreement that required her to repay it. The mortgage from FCIBC had an insurance component which was used to settle the mortgage. The claimant took the remainder for her own use, despite the defendant asking her to use the funds to settle the NCB mortgage.

[22] Ms. Forrest denied borrowing any money from Sagicor.

[23] Although she took instructions and drafted the Will her brother never discussed severing the joint tenancy and there was no mutual agreement to sever the joint tenancy.

Preliminary Issues.

[24] Counsel for the defendant saw it fit to burden herself and this court with submissions in relation to whether the claimant has a claim under the Property Rights of Spouses Act. (PROSA) To begin with this claim was never filed as such nor could it be entertained as a claim under PROSA at this time. Although the claimant has referred to the subject property as the family home that does not to my mind automatically elevate it to a claim under PROSA.

[25] I am also guided by the definition of family home under PROSA. Under section 2 (1):

> "family home" means the dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one spouse by a donor who intended that spouse alone to benefit;

[26] Therefore, quite apart from the fact that there is no claim under PROSA, the undisputed evidence before this court is that in 2001 the deceased was married to one Nicole Davis. The marriage subsequently came to an end and a Decree Absolute was issued in 2009. The subject property was acquired in 2004, while the deceased was married to Ms. Davis, and registered in the joint names of the defendant and the deceased. The subject property therefore was never owned by either one or both spouses, it does not qualify as the family home.

[27] Counsel for the defendant has also submitted that the claimant did not plead estoppel nor did she plead her legal claim in a set of grounds as it concerns her assertions that she contributed to the acquisition, improvement and mortgage for the subject property. In support of this submission, she relied on Rule 8.9A of the **Civil Procedure Rules, 2002 (CPR)**. I will begin with rule 8.9:

> "8.9 (1) The claimant must include in the claim form or in the particulars of claim a statement of all facts on which the claimant relies.
>
> (2) Such statement must be as short as practicable.
>
> (3) …
>
> (4) Where the claim seeks recovery of any property, the claimant's estimate of the value of that property must be stated."
>
> "8.9A The claimant may not rely on any allegation or factual argument which is not set out in the particulars of claim, but which could have been set out there, unless the court gives permission."

[28] In the Court of Appeal decision of **Grace Kennedy Remittance Services Limited v Paymaster (Jamaica) Limited and Paul Lowe**, SCCA No. 5 of 2009, Harris JA had to consider rule 8.9 and 8.9A of the CPR. At paragraphs 28 to 31 of her judgment she observed that:

"[28]. This leads me to consider at this stage the scope and function of pleadings. It is a well-established principle that pleadings are designed to disclose the case on which a party intends to rely so that the opposing party may direct his evidence to the issue or issues divulged by the pleader.

[29]. The function and role of pleadings was recognized by the learned authors of **Pleadings, Principles and Practice** at page 3 in the following context –

> 'The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of [Ord 18] was to prevent the issue being enlarged, which would prevent either party from knowing when the case came on for trial, what the real point to be discussed was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby diminish expense and delay.'

[30]. Part 8 of the Civil Procedure Rules 2002 governs, among other things, the scope of a pleading. It is important to look at Rule 8.9(1) and 8.9A of the rules...

[31]. Rule 8.9 shows that a claimant should plead a statement of facts on which it is intended to place reliance. The statement should be as short as practicable. In keeping with the general rule, a party should plead all material facts. A pleading essentially defines the boundaries of each party's case and it is important that the statement or statements therein should recite the general nature of the parties' case."

[29] Harris JA also relied on the case of **McPhilemy v Times Newspaper** [1999] 3 All ER 775 and concluded at paragraph 32:

"The authorities have shown that Rule 8.9 of the Civil Procedure Rules 2002 obviates the requirement for extensive pleadings as regards particulars. Once the general nature of a claim has been pleaded, if witness statements

are exchanged, these statements may supply particulars of a claim. Lord Wolfe [sic], in **McPhilemy v Times Newspaper** [1999] 3 All ER 775 lends support to this proposition, when at page 778 he said:

> 'The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules. The Practice Direction CPR 16, paragraph 9.3 requires, in defamation proceedings, the facts on which a defendant relies to be given. No more than a concise statement of those facts is required.'"

[30] Based on the authority above, once the Claim Form makes it clear the general nature of the case of the claimant, the court may examine, as in this case, the affidavit filed in support of the Fixed Date Claim Form to determine whether it provides the details of the nature of the case so as to put the other side on notice of the claim.

[31] In **Grace McCalla v Eric McCalla and Others** 2005HCV00233 Sykes J at paragraph 60 said:

> "A claim to an equitable interest in property by any person other than the legal title holder … inevitably involves the proposition that the legal title holder is holding all or some part of the property as trustee for the claimant."

[32] The FDCF in the case at bar seeks a declaration that the claimant has a proprietary and equitable legal interest in the subject property. That to my mind was sufficient to put the defendant on notice of the parameters of the case. The affidavit filed in support of the FDCF, in particular, paragraphs 12, 16 and 17 sets out the basis for Ms. Grants claim in proprietary estoppel and in trust. In the circumstances, I do not agree with counsel for the defendant that Ms. Forrest was placed at a 'distinct and unfair disadvantage.

[33] I have identified the following as the main issues to be addressed in this case:

1. **Whether the joint tenancy was severed during the lifetime of the deceased or alternately**

2. **Whether the claimant has a proprietary and equitable interest in the subject property**

Whether the joint tenancy was severed during the lifetime of the deceased.

[34] It is true that common law prefers joint tenancies while equity favours tenancies-in-common. This is because common law does not like the division of land. A joint tenancy may become a tenancy-in-common by severance, that is, when one of the four unities, possession, interest, title or time, is removed. See **Carol Lawrence, Mary Lawrence, Diane Lawrence v Andrea Mahfood** [2010] JMCA Civ 38.

[35] The often-cited case of **Williams v. Hensman** (1861), 70 E.R. 862, was relied on by both parties as the authority on what is required to sever a joint tenancy. I see no need to depart from it. At page 867 of the judgment Vice Chancellor Wood indicated:

> "A joint-tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund — losing, of course, at the same time, his own right of survivorship. Secondly, a joint-tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been effected, as happened in the cases of **Wilson v. Bell** [(1843), 5 Ir. Eq. R. 501 (Eg. Eq. Exch.)] and **Jackson v. Jackson** [(1804), 9 Ves. 591 (Eng. Chancellor)]."

[36] Counsel for the claimant seems to have hung her hat on the third principle. She, I find, has accepted that the first and second principles are not applicable in this case.

[37] In **Sunshine Dorothy Thomas, Owen Brown v Beverley Davis** [2015] JMCA Civ 22, Brooks JA referred to the first principle outlined by the Vice-Chancellor as the "unilateral alienation by one of the joint tenants" of his share of the property. He went on at paragraph 97 to explain what was meant by unilateral alienation as follows:

> "…unilateral severance must be an irrevocable act which would prevent the actor from being able to claim survivorship of another joint tenant's interest."

[38] The parties I am certain also accept that a joint tenancy cannot be severed by a Will, as such, the act being relied on is the giving of instructions by the deceased for the drafting of his Will to the defendant who in turn carried it out. This act, the claimant argues, was compounded by the defendant taking steps to have the Will probated. The question to be answered is whether the acts highlighted were final and irrevocable?

[39] The answer is no. I have come to that conclusion by virtue of the fact that a severance must take place during the life of a joint tenant. A Will is a revocable disposition that will only have effect after the death of the testator. In this case, the Will today is no longer valid as it was revoked by his subsequent marriage to the claimant. The acts of the deceased and the respondent were therefore not final and irrevocable.

[40] There is no evidence of a mutual agreement to sever the joint tenancy and none has been alleged. I am therefore left with the third principle.

[41] Are the combined actions of the deceased and the defendant prior to his death and the actions of the defendant after the death of Michael Forrest enough for the court to say that they represent a course of dealing between the joint tenants sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. It is accepted that a Will cannot sever a joint tenancy. It stands to reason therefore that the act of drafting a Will, and I will say, even in the presence of or with the knowledge of the other joint tenant, leaving your interest to someone else cannot operate as a severance. Severance under this principle requires both joint tenants to actively embark on a course of conduct contrary to the existence of a joint tenancy.

[42] There is no evidence before the court of what transpired in the hospital room when the instructions were given. All the court has before it is that the deceased was terminally ill and the defendants' evidence that she honoured his request because she believed that he would recover and would then have been able to review the

Will as she did not expect him to die so soon. Similarly, the attempt to probate the Will (which was invalid) was derailed by the adult children of the deceased and surprisingly, by the claimant herself.

[43] In **Simone Grant v Denise Forrest** [2021] JMSC Civ 178 Lawrence-Grainger J (Ag), as she then was, presided over the inter-partes hearing for the injunction applied for by the claimant. In deciding whether there was a serious issue to be tried she examined the issue of severance of the joint tenancy. The learned judge seemed to consider severance in this case under the first principle, alienation of interest. She specially examined the assertions of the claimant that the joint tenancy was severed based on the actions outlined at paragraph 38. She relied on several authorities including **Bertram Cooper v Linford Coleman** [2004] HCV01803 where at paragraph 23 McDonald Bishop J (Ag) as she then was, stated:

> "Under common Law, a mere declaration of an intention to sever without the agreement of the other joint tenant was not effective to sever a legal tenancy. As Lord Hardwicke, LC said: "If no agreement then there must be an actual alienation to make it amount to a severance. The declaration of one of the parties that it be severed, is not sufficient, unless it amounts to an actual agreement."

[44] The Learned Judge identified the Will as the only substantial evidence that the deceased alienated his interest. She found everything else to be mere assertions. She also found that the fact that the defendant was aware of the contents of the Will was not evidence that she agreed with the wishes of her brother. She found that there was no severance of the joint tenancy. Her ruling was not appealed and although it was made pursuant to an interlocutory application, a court of concurrent jurisdiction has made a decision in relation to an issue in this case. Even in the absence of this ruling, my reasons would have been the same. In the circumstances, the claimant has not brought sufficient evidence before the court to put me in a position to find that the joint tenancy was severed.

[45] Having found that the joint tenancy was not severed then it stands to reason that there is nothing to revert to the estate of the deceased as the right of survivorship would vest the property in the surviving joint tenant.

Whether the claimant has a proprietary and equitable interest in the subject property

[46] I will now consider the issues that arise from the declarations sought in the alternative by the claimant. Counsel has asked the court to find that the deceased and the defendant are estopped from relying on the joint tenancy. In relation to the deceased, on the basis that she made loan payments along with her husband prior to his death because of the 'implied agreement with him that they had acquired and owned their home together'. In relation to the defendant, that based on the representations made by Ms. Forrest she continued making the payments after the death of Michael because she was assured by the defendant that the subject property would be hers if she did.

[47] The claimant is also asking the court to declare that the defendant holds the subject property on trust for her.

Proprietary Estoppel

[48] In **Crabb v Arun District Council** [1975] 3 All E.R. 865 at page 871 Lord Denning MR said:

> "In the species of estoppel called proprietary estoppel… . The new rights and interests, created by estoppel, in or over land, will be protected by the Courts and in this way give rise to a cause of action. This was cited in **Spencer, Bower and Turner on estoppel by Representation**, Second Edition (1966) at pages 279 to 282.
>
> …The basis of this proprietary estoppel - as indeed of promissory estoppel - is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as "estoppel". They

spoke of it as "raising an equity". If I may expand that, Lord Cairns said: "It is the first principle upon which all Courts of Equity proceed", that it will prevent a person from insisting on his strict legal rights - whether arising under a contract, or on his title deeds, or by statute - when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties, …What then are the dealings which will preclude him from insisting on his strict legal rights? -If he makes a binding contract that he will not insist on the strict legal position, a Court of Equity will hold him to his contract. Short of a binding contract, if he makes a promise that he will not insist upon his strict legal rights - then, even though that promise may be unenforceable in point of law for want of consideration or want of writing - then, if he makes the promise knowing or intending that the other will act upon it, and he does act upon it, then again a Court of Equity will not allow him to go back on that promise, see **Central London Property Trust v High Trees House** (1947) KB 130: **Richards (Charles) v Oppenhaim** (1950) KB 616, 623. Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights - knowing or intending that the other will act on that belief - and he does so act, that again will raise an equity in favour of the other: and it is for a Court of Equity to say in what way the equity may be satisfied. The cases show that this equity does not depend on agreement but on words or conduct. “

[49] Proprietary estoppel therefore, will be recognised in cases where the court finds that it would be inequitable for the promissor to insist on his or her legal rights contrary to any agreement or promise made to vest a proprietary interest in the promisee. The existence of the promise alone is not enough, the promisor must be aware that the promisee will act upon the promise and does infact act to his or her detriment.

[50] It important to understand that this promise does not have to be in writing. The court will examine the course of dealings between the parties, including their

conduct and words spoken. Caselaw has overtime refined this into three elements, representation (an assurance of rights), reliance (a change of position) and unconscionable disadvantage (detriment)

[51] In the Court of Appeal decision of **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ 6, Morrison JA had to consider whether a proprietary estoppel existed. In his usual diligent manner, Morrison JA examined the development of proprietary estoppel through the courts. At paragraph 73 he stated:

> "Although proprietary estoppel is not based on contract, it is therefore always necessary to have regard to the nature and terms of any agreement between the parties. In the absence of agreement, the important starting point must be, firstly, whether there has been a representation (or assurance) by the landowner, capable of giving rise to an expectation that is not speculative, that she will not insist on her strict legal rights. Secondly, there must be evidence of reliance on the representation (or change of position on the strength of it) by the person claiming the equity. And, thirdly, some resultant detriment (or disadvantage) to that person arising from the unconscionable withdrawal of the representation by the landowner must be shown. But unconscionability, standing by itself, without the precedent elements of an estoppel, will not give rise to a cause of action."

[52] The evidence in relation to an agreement with the deceased is non-existent. The basis of this claim by Ms. Grant is that there was an implied agreement with the deceased that they owned the home together. No specific words have been attributed to Mr. Forrest. It appears that the implied agreement was by dint of them living in and decorating the house together. There is nothing else from which this court can say that the deceased led Ms. Grant to believe that if she carried out certain acts she would have an interest in the property and that she in fact consequently acted to her detriment. In fact, there was no real attempt to establish proprietary estoppel through the deceased. I can understand why. A claim of this nature would have to be brought against the Estate of Michael Forrest.

[53] Case law has demonstrated that "short of an actual promise, if he, by his words or conduct, so behaved as to lead another to believe that he will not insist on his strict legal rights - knowing or intending that the other will act on that belief, he will be estopped from insisting on his legal rights. The focus of the case under this heading are the alleged conversations that Ms. Grant had with Ms. Forrest. They are presented in different stages. At the reading of the Will, the claimant's evidence is that the defendant assured her that the subject property was hers. Thereafter, this discussion arose again after talks with the defendant about selling the subject property. On the evidence, Ms. Grant became aware of the NCB loan at a later date, it is at this time Ms. Grant says that they reached an agreement that if she continued to make the payments towards the loan Ms. Forrest would transfer the subject property to her. At that time the balance stood at $3,674,999.88. It is to be noted that the letter advising the defendant of the outstanding balance is dated June 17, 2020.

[54] At the beginning of her evidence counsel sought amplification in relation this June 17, 2020, from NCB. Her evidence is, having learnt of the loan, the defendant asked her to make payments. Without more I would accept this as proof that she acted on the promise made by the defendant that if she paid the loan the subject property would be transferred to her. However, under cross examination Ms. Grant agreed to several things, first that Micheal died in January 2020, secondly that she retained counsel because of the disagreement concerning the house, "the shock that she owned 50%". However, her attorney was retained in February or March of 2020. At that time, she would not have seen any letter from NCB. Indeed Ms. Forrest would not receive that letter until some three months later, give or take two weeks. At that time, there was no disagreement about the subject property when according to her evidence she had been assured that the subject property would have been transferred to her.

[55] Under cross examination Ms. Grant also agreed that she made the payments to save her home. She did so because she knew that without the payments the bank would sell the house. However, the court was only provided with five receipts dated

September 3, 2020 in the sum of $137,000.00, September 30, 2020, December 31, 2020, January 26, 2021 and February 23, 2021 in the sum of $66,500.00. Permit me while I digress for a short while, Counsel for the defendant sought to discredit the receipts by calling into question the fact that the sums were paid by a Roger Johnson for whom there was no explanation before the court in relation to who he is. I do not need to know who he is. I accept that it is a common practice for persons to do banking transactions on behalf of other persons in this country, particularly those persons in business and people who generally speaking do not have the time to visit the bank. The exhibits clearly state that the sums were paid to account number 061114009 in the name of Denise Forrest. Ms. Grant has tendered the receipts as her proof that she paid the sums. 061114009 is the account number for the NCB loan facility attached to the subject property. Unless Ms. Forrest is saying that it is she who paid these specific sums I see no reason to reject the receipts. I am satisfied that the sums were paid into the account on behalf of Ms. Grant.

[56] That being said, the June 2020 NCB letter was urgent. The payments seem like a half-hearted attempt after the fact and do not give the appearance of the actions of someone who was acting pursuant to an agreement/promise that if she repaid the outstanding $3,674,999.88 the subject property would be transferred to her. Finally, on this point Ms. Grant, on her evidence did not complete the agreement. $403,000.00 can hardly be seen as acting to her detriment in the circumstances.

[57] I also consider Ms. Grants evidence under cross examination. She quite emphatically told this court that the real reason she started paying on the NCB mortgage is because she did not want the bank to sell the house. The conversations was as follows:

> “Q: Your earlier evidence in answer to your attorney’s question, did you make payment? You said yes. You were asked why and you said to save your home.

Question: From whom?

A: NCB

Q: You knew that without those payments the bank would sell the house?

A: Correct

Q: This is the real reason you started paying on the mortgage to NCB, correct

A: Oh yes!”

[58] Context is everything. Those questions were being put to her based on her assertions that she made the payments because of the agreement she made with Ms. Forrest. The implication of her response, therefore, is that she did not act because of the promise but because she did not want to lose what she considered to be her home. Therefore, although she may have paid some money, I find that her actions were not as a result of any assurance given to her by the defendant.

RESULTING TRUST

[59] In **Muschinski v Dodds** 160 C.L.R 583, Deane J adopted the words of Gibbs C.J. in **Calverley v Green** (1984) 59 ALJR 111; ALR 483 describing what the court looks at when deciding on the existence of a resulting trust as follows:

> “The equitable rules relating to the creation of a resulting trust in a case such as the present was recently considered by this Court in **Calverley v. Green** (1984) 59 ALJR 111; 56 ALR 483. For present purposes, it is sufficient to state them as follows. 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. It was held in Calverley v. Green that no presumption of advancement arises where a man puts property into the name of a woman with whom he is living in what is commonly called a "de facto relationship" and, since it has been held that there is no presumption of advancement where a wife makes a purchase in the name of her lawful husband (**Mercier v. Mercier** (1903) 2 Ch 98), there is even stronger reason for holding that no such presumption arises where a woman puts property into the name of her "de facto husband". 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 to the purchase money, the intentions of both are material, but where only one has provided the 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"

[60] The cases have established that this type of trust arises in circumstances where there is more than one purchaser of a property. The presumption is, regardless of whether their names are all registered on the title, that each party holds a beneficial interest in the property in accordance with their contribution. This case is a prime example of why couples should as best as possible make their intentions clear and also formalise transactions between them when they acquire property, married or not. The claimant has brought this matter claiming in the alternative an equitable interest in land on the basis of trust. Her evidence in support of a resulting trusts is that she contributed $1,000,000.00 to the purchase price. $500,000.000 of her own and $500,000.00 borrowed from one Ronald Bagaloo which was repaid from

the joint business owned by herself and the deceased. There is no documentary evidence of this contribution.

[61] On the claimant's evidence, she and the deceased started a common law relationship in 2000. We have already established that although the claimant and the deceased may have been in a relationship, it was by no means a relationship that the law could acknowledge as Mr. Forrest was married, and he remained married until 2009. The subject property was purchased in 2004 and registered in the names of the deceased and his sister. I find that I must ask, why did the deceased not register the property in the name of the claimant if she contributed the purchase price? No explanation has been given to the court as to why her name was not added since she provided some of the purchase money. Throughout this relationship which surpassed 12 years, she laboured under the belief that the property was solely in Michael's name and not once did he tell her that the property was registered in the joint names of himself and his sister. Not even when he was on his death bed.

[62] It is the claimant's burden to satisfy this court on a balance probabilities that she did in fact contribute to the purchase price. She has not provided this court with any documentary proof of her contribution. She did not call Ronald Bagaloo as a witness, even though it was borne out under cross examination that he was alive and living in Jamaica. The defendant for her part denies any contribution by the claimant and asserts that it was she who contributed $2M to the purchase price. The balance was obtained by way of a loan from FCIB. Of course, she did not provide one iota of proof either but the burden is not hers bear. In this case the determination of whether the claimant contributed to the purchase price is a matter of whose evidence the court accepts.

[63] In order for the court to invoke equity in aid of a claimant, I am of the view that the evidence presented to the court must be of a calibre higher than the credibility of the claimant alone. Ms. Grant is asking this court to accept her word that she

contributed to the purchase price. I find that I cannot. The claim under this heading must fail.

CONSTRUCTIVE TRUST

[64] In **Muschinski v Dodds** Gibbs C.J examined a line of cases where the matter of the existence of a constructive trust was a live issue. At paragraph 13 he stated:

> "Nevertheless, in **Hayward v. Giordani** (1983) NZLR 140, Cooke J., speaking obiter, appears to have accepted that a constructive trust may be based upon a common intention imputed to the parties who had not in fact formed the intention. With the greatest respect I agree with Glass J.A. in **Allen v. Snyder,** at p 694, that the proposition that a constructive trust may be based upon a common intention which does not actually exist, but which is ascribed to the parties by operation of law, is contrary to principle and to authority..."

[65] The learned authors of Halsbury's Laws of England (2019), Volume 98, at paragraph 25, expressed that constructive trusts are automatically imposed in situations where it would be unconscionable or against equitable principles for the legal owner to retain the property solely for their own benefit.

[66] In **Lloyds Bank plc v Rosset** [1991] 1 AC 107, page 132 F-G and pages 132 G – 133 A, Lord Bridge of Harwich expounded on the requirement of an agreement or arrangement between parties in order to establish a beneficial interest in a property. He was of the view that for the court to find that an agreement existed there must be evidence of "express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been."

[67] Lord Bridge continued and pointed out that there was a difference between those cases where there was an agreement and those where there was none:

> "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 to the basis from which to infer a common intention to share the property beneficially and as to 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 installments, 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."

[68] As has already been discussed Ms. Grant has not provided any evidence of any words spoken by Michael whether general or specific to support a conclusion that there was an agreement or arrangement between herself and the deceased. Where there is no evidence of an agreement the court will examine the conduct of the parties to ascertain the intention of the parties at the time the property was acquired. In this case there is also no evidence of conduct at the time that the subject property was acquired. Thereafter, the only evidence put before this court is that the parties decorated the home together. In fact, this court finds it quite telling that the claimant was unaware of the second mortgage on the house, a fact which only came to her attention after the death of Michael Forrest.

[69] The only evidence before this court is the indirect contribution made by way of mortgage payments by the company jointly owned by the deceased and the claimant. Although no documentary proof was tendered, the defendant agreed that it was the company that paid the installments. Even this bit of evidence is subject to context. The deceased owned the business called So So Seafood before he met Ms. Grant. Although she was the company secretary, she was not the owner. So So Seafood experienced a fire in 2014. Thereafter So So Seafood ceased to exist and Phoenix Lounge at So So Seafood was born. This is important because the mortgage payments were made by the company. At the time of the purchase, the company was solely owned by the deceased so the payment of the

mortgage from the company funds cannot be attributed to any joint intention of Ms. Grant and the deceased. So, while I accept that Phoenix Lounge at So So Seafood, a business owned wholly by the deceased and the claimant paid the mortgage for the subject property after a time, this only came about to my mind as a continuation of what existed before the change of name. As such, those payments cannot be attributed to the claimant as proof of interest or intention. The deceased, from the evidence, regularly used the income from the business to do things for his own benefit without much thought to the claimant.

[70] The affidavit evidence from the claimant in this matter is that having discovered that the subject property was registered in the joint names of the deceased and the defendant, she came to the conclusion, the understanding, the belief that the house would be hers based on what the defendant said. Therefore, although throughout the years she treated the home as the "family home", it seems to me, that she did so based on her belief that the property was registered solely in Michaels name, as such at the end of the day, as his common law spouse, she would be entitled, at the very least to a 50% interest in the subject property. This does not seem to be an understanding or belief shared by the deceased.

[71] What, to my mind transpired, based on the evidence, is that in the throes of death Michael's conscience became active and knowing that his interest would pass to his sister he decided to attempt to change that outcome by drafting the Will. An act he revoked shortly thereafter by marrying the claimant.

DISPOSITION

[72] As has been said, not much in the form of documentary evidence was provided to the court in support of this claim. Although the claimant averred that she spent substantial sums decorating the home she has not provided any evidence to substantiate her claim. Additionally, I am hard pressed to believe that all the funds spent to decorate the subject property came solely from her without an input from the deceased. The court was only provided with five receipts totaling $403,000.00.

On the evidence before me the joint tenancy was not severed. Consequently, at the time of the death of Michael Forrest, the subject property was still held as a joint tenancy. Under the rules of survivorship 4 Knightsbridge Manor, 41 Kings House Avenue, Kingston 6 in the parish of St. Andrew passed to the defendant Ms. Denise Forrest.

[73] The Claimant in the alternative has sought a declaration as to proprietary and equitable interests in the subject property. However, the evidence presented to this court does not support any of the equitable remedies sought by the claimant. It is most unfortunate that the claimant may well find herself out of a home having lived her life with the deceased in the subject property for so many years.

ORDERS

[74] The claimant is to be reimbursed the sum of $403,000.00 paid towards the NCB loan facility with interest at the interest rate used by the Bank of Jamaica on personal loans. Said interest is to be calculated on the respective sums from the date of each deposit, being September 3, 2020, September 30, 2020, December 31, 2020, January 26, 2021 and February 23, 2021 until the date of payment.

[75] The claimant has no equitable interest in the subject property.

[76] Costs to the defendant to be agreed, if not taxed.

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Ms. Justice Opal Smith (Ag)