



[2020] JMSC Civ 243

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2017HCV02865**

**BETWEEN**

**GARNETT HALL**

**CLAIMANT**

**AND**

**JOYCE MAUD CAMPBELL**

**DEFENDANT**

**IN CHAMBERS**

**Ms. Nneka Francis, instructed by N. Francis & Co, Attorneys-at-Law for the Claimant.**

**Ms. Heatha Miller, instructed by HMMILLERLAW, Attorneys-at-Law for the Defendant.**

**Heard: 29<sup>th</sup> September, 2020, 30<sup>th</sup> September, 2020 and 28<sup>th</sup> November, 2020**

**Civil Procedure – Whether the Claimant abandoned his interest in real property -  
Whether the Defendant dispossessed the Claimant - What is the effect of the  
execution and registration of the Instrument of Transfer subsequent to the  
purported period of dispossession -**

**Cor: V. Smith, J (Ag.)**

**Introduction**

**[1] This case touches and concerns all that parcel of land part of Orange Bay Estate in the parish of Hanover being the Lot numbered One Hundred and Twelve on the plan of part of Orange Bay and being all the land comprised in Certificate of Title**

registered at Volume 1368 Folio 632 of the Register Book of Titles. This property is held by the claimant and defendant as joint tenants. The claimant is seeking to realise his interest in the property and as such is seeking a declaration stating the parties' interests therein and orders to have the defendant pay him for his half share in the property or in the alternative to have the property sold and the proceeds of sale divided equally. It is the case for the defendant that she has dispossessed the claimant of his interest in Lot 112 and as such has become solely entitled to the property. She thus argues that the claimant is not entitled to the declaration and orders being sought.

### **Background**

[2] The claimant, Mr. Garnet Hall, and the defendant, Ms. Joyce Maud Campbell, began a relationship in 1988 and were married on the 13<sup>th</sup> day of October, 1990. The union produced one child, namely, Romaine Hall. They initially lived together at rented premises situate at Wharf Road, Orange Bay in the parish of Hanover, which became their matrimonial home. During the course of the relationship, they took steps to acquire property located at Lot 112 Orange Bay Estate, Green Island P.O. in the parish of Hanover which was originally part of a larger parcel of land but is now all that parcel of land comprised in Certificate of Title registered at Volume 1368 Folio 632 of the Register Book of Titles, hereinafter referred to as 'Lot 112'.

[3] In or around 1991, the marriage took a turn for the worse and the parties separated when the claimant left the matrimonial home and went to reside at Lot 112 in a structure, which was under construction. The claimant migrated to the United States of America in November 1992. Thereafter, the defendant continued construction and then moved onto the property in or around 1993 to 1994. The claimant returned to the Island in 2004 and sought to further the process of having the Title for Lot 112 registered in their joint names, but was unsuccessful. He returned to the Island in 2008 and signed the Instrument of Transfer, however the defendant did not. Some eight to nine years later, the defendant signed the

Instrument of Transfer and the title for Lot 112 was duly registered in their names as joint tenants on the 17<sup>th</sup> day of January 2017.

- [4] The claimant wishes to realise his interest in Lot 112 but has been unsuccessful in his attempts to negotiate with the defendant for her to purchase his share of the property. He therefore seeks a declaration that he is entitled to one-half share in Lot 112 and that as a result, the defendant should be required to pay him a sum representing his share, or in the alternative, that the property should be sold and the proceeds of sale shared equally between them.
- [5] On the other hand, the defendant contends that the claimant abandoned his interest in Lot 112 and that she was in open, undisputed, undisturbed possession thereof for at least 12 consecutive years. Consequently, she asserts that she has dispossessed the claimant of his interest in the property by virtue of the provisions of the Limitation of Actions Act, 1881 and that she is therefore solely entitled to the property.

#### **Claimant's assertions**

- [6] The claimant avers that in 1989 he entered into negotiations with the Urban Development Corporation (UDC) for the purchase of Lot 112. He asserts that the price agreed for same was Eight Thousand Dollars (\$8,000.00) and that he paid the sum of Eight Hundred Dollars (\$800.00) as a deposit with the balance of the purchase price to be paid by way of monthly instalments. It is the case for the claimant that after paying the deposit in 1989, he began paying the monthly instalments and commenced construction of two (2) dwelling houses on the property. He states that he and the defendant agreed that he would provide the materials for the construction of the dwelling houses and that the defendant would pay the workers. He indicates however, that contrary to this arrangement, he had to secure a loan for the purposes of paying workmen for the decking of the dwelling houses.

- [7] The claimant contends that he continued to make the monthly instalments and that due to the breakdown of the marriage in 1991; he left the matrimonial home and went to reside at Lot 112. He states that he solely made the monthly payments until November 1992 when he migrated and that thereafter, the monthly instalments were paid jointly by himself and the defendant with payment of the purchase price being made in full by 1996.
- [8] He suggests that the joint payments made between November, 1992 and 1996 were generated from a boating business owned by himself and the defendant and that the income therefrom was used not only to settle the purchase price by way of the monthly instalments but was also used to complete construction of the dwelling houses. He admits that when he left the Island, he and the defendant were not on speaking terms. However, he maintains that whilst living overseas he would remit funds to the defendant from time to time and has exhibited Western Union slips in support of this contention. He also avers that he would receive updates regarding the progress of construction as well as pictures of the property from the defendant. The claimant therefore asserts that despite being off the island he never abandoned his interest in Lot 112.
- [9] By way of his evidence, he states that he returned to the Island for a visit in 2004 and went to the property and had discussions with the defendant. Whilst there, he says he broached the topic of rent collected by her to which he would be partially entitled and an argument ensued resulting in him deciding to leave the property. He further submits that during his visit in 2004 he went to the UDC to sign transfer documents in relation to said property but was unable to do so as a result of attending the wrong UDC office. He also contends that during this said visit he paid property taxes for the property and has tendered property tax receipts into evidence as proof thereof. He submits that in subsequent visits to the Island he attended at the UDC's offices and executed the Instrument of Transfer to have the Title for the property vested in his and the defendant's names.

**[10]** The claimant maintains that in January of 2017, the defendant executed the said Instrument of Transfer and that as a result, the Certificate of Title for Lot 112 Registered at Volume 1368 and Folio 632 of the Register Book of Titles was duly endorsed in his name and that of the defendant as joint tenants. He posits therefore that he has a fifty percent (50%) interest in the property and is entitled to realise his interest at this time.

**The Defendant's assertions**

**[11]** The defendant asserts that she has been living at Lot 112 in sole, undisputed, undisturbed possession for at least 18 years. It is her evidence that the claimant migrated in 1992 and never returned to Jamaica until 2004. She insists that he abandoned his interest in the property as he left without saying anything to her and did not maintain contact nor did he leave a forwarding address. She has exhibited receipts to indicate that she carried out construction on the property and gave evidence that she received no financial assistance from the claimant with regard to the maintenance of the property after he migrated. As such, she maintains that she was solely responsible for paying the further monthly instalments, constructing the dwelling house and for paying the property taxes.

**[12]** The defendant admits that an Instrument of Transfer was executed by her in January of 2017 and was thereafter registered on the Certificate of Title for the property thereby vesting the property in the names of the claimant and defendant as joint tenants. She posits however, that one joint tenant can dispossess another and contends that in circumstances where the claimant has abandoned his interest in the property and where she has been in open, undisputed, undisturbed possession thereof, she has dispossessed him of his interest and is therefore solely entitled to the entire property.

**Issues to be determined:**

**[13]** The issues which arise for discussion are:

1. Whether the claimant abandoned his interest in Lot 112?
2. Whether the defendant dispossessed the claimant of his interest in Lot 112?
3. What is the effect, if any, of the Registration of the transfer in the names of the claimant and defendant as joint tenants?
4. What effect, if any should the financial contributions of each party have with regard to their interest in the property?

**Whether the claimant abandoned his interest in the property?**

[14] In response to the defendant's assertions that the claimant abandoned his interest in the property, as he did not maintain contact with her during the period while he was away, the claimant asserts that he did not. Though he agrees that when he left Jamaica in November 1992 he and the defendant were not on speaking terms, he suggests that they resumed communication soon after his departure. He rejects the defendant's assertion that they were not in contact after he migrated and gave evidence that the defendant sent him pictures and messages in relation to the dwelling houses on the property in 1995. In addition, he cited telephone conversations he had with her in 1996 when he says she accounted to him about the status of the completion of the said dwelling houses.

[15] The claimant also maintains that he sent funds to the defendant whilst abroad as further proof that they were in contact. To this end, he tendered into evidence slips from Western Union dated June 2, 2000 and August 27, 2002, which show his name as the sender and the defendant's name as the recipient, as proof of funds sent by him to her on the aforementioned dates. It was further borne out under cross-examination of the defendant that their son, Romaine, visited the claimant in New York in 2001 at the age of 11 and again in 2006 at the age of 16. The defendant admitted under cross-examination that she had to provide the address for the claimant in New York in order for the United States authorities to allow the minor to travel. Counsel for the claimant submits that this evidence contradicts the

assertion by the defendant that she was not in communication with the claimant and had no forwarding address for him.

- [16] The court finds on a balance of probabilities that the claimant did in fact maintain contact with the defendant after he migrated. Though it is accepted that when the claimant initially left the country he was not on speaking terms with the defendant, the evidence demonstrates that shortly after his departure there was in fact a resumption of communication between the parties. Though the defendant disputes that she sent pictures, messages or gave updates on the status of the dwelling houses to the claimant, it is not in dispute that funds were sent to her through Western Union by the claimant. Nor is it disputed that their son, Romaine, left her custody to travel to New York to visit the claimant on two occasions. This court therefore rejects the assertions of the defendant that the parties were not in contact while he was overseas and finds on a balance of probabilities that not only were they in contact, but this court accepts the evidence of the claimant that this communication extended to matters concerning the property. As a consequence, the court finds that the claimant had not abandoned his interest in Lot 112.

#### **Whether the defendant dispossessed the claimant?**

- [17] Notwithstanding this finding by the court, the authorities clearly demonstrate that for the purposes of adverse possession it is the intention of the dispossessor that is relevant and not the intention of the dispossessed as set out by Lord Browne-Wilkinson in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419 and approved in the case of *Wills v Wills* [2003] UKPC 84. Additionally, as the possession of co-tenants is separate, one joint tenant may dispossess another.
- [18] It may be appropriate here to set out the provisions of the Limitation of Actions Act of 1881, on which the defendant based her claim of sole entitlement to the property by means of adverse possession. She relied on sections 3, 4, 14 and 30 of the Act which state (in part) as follows:

- “3. No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.
4. The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned –
- (a) when the person claiming such land or rent or some person through whom he claims shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;
14. When any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants-in-common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.
30. At the determination of the period limited by this part to any person for making an entry, or bringing any action or suit, the right and title

*of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.”*

[19] Counsel for the defendant submits that the effect of sections 3 and 4 of the Act establishes that once a person has been in sole, exclusive, open and undisturbed possession of land for twelve years, he may bring a claim asserting that by his possession he has dispossessed the title holder and the title holder would in such circumstances be barred from recovering the land. She surmises therefore, that after twelve years, a title holder’s failure to exercise a right in relation to land will give a defendant a complete defence to any subsequent claim.

[20] She relies on the case of ***Paradise Beach Transportation Company v Cyril Price Robinson*** [1968] A.C. 1072, PC in which Lord Upjohn stated thus:

*“The effect of the Limitation of Actions Act, 1881, is that one co-owner, whether joint tenants or tenants-in-common, could extinguish the title of the other. Under section 3 of the Act, the question is whether the requisite number of years has elapsed from the time the right of entry of the paper owner accrued, regardless of the nature of the possession of the person claiming title by extinction of the paper owner’s title. Section 3 of the Act, places the time period for dispossession at twelve years.”*

[21] Counsel for the defendant also placed reliance on the case of ***Lois Hawkins (Administratrix of Estate of William Walter Hawkins, Deceased, Intestate) v Linett Hawkins McInnis*** [2016] JMCA Civ 4, in which Sykes J. as he then was, commented on the operation of Sections 3, 14 and 30 of the Limitation of Actions Act, 1881.

[22] He states, inter alia, at paragraph 12 as follows:

“[12] The law in this area is no longer in doubt. It was most recently expounded by the Court of Appeal in ***Fullwood v Curchar*** [2015] JMCA Civ 37. This court cannot improve on the clarity, precision and exposition of McDonald Bishop JA (Ag). The court will simply refer to paragraphs

[29] to [54]. From these passages, the following propositions are established:

- (i) the fact that a person's name is on a title is not conclusive evidence such that such a person cannot be dispossessed by another, including a co-owner;
- (ii) the fact of co-ownership does not prevent one co-owner from dispossessing another;
- (iii) sections 3 and 30 of the Limitation of Actions Act operate together to bar a registered owner from making any entry on or bringing any action to recover property after 12 years if certain circumstances exist;
- (iv) in the normal course of things, where the property is jointly owned under a joint tenancy, and one joint tenancy dies, the normal rule of survivorship would apply, and the co-owner takes the whole;
- (v) however, section 14 of the Limitation of Actions Act makes the possession of each co-tenant separate possessions as of the time they first become joint tenants with the result that one co-tenant can obtain the whole title by extinguishing the title of the other co-tenant;
- (vi) the result of sections 3, 14 and 30 of the Limitation of Actions Act is that a registered co-owner can lose the right to recover possession on the basis of the operation of the statute against him or her with the consequence that if one co-owner dies, the normal rule of survivorship may be displaced and a person can rely on the deceased co-owner's dispossession of the other co-owner to resist any claim for possession;

(vii) when a person brings an action for recovery of possession, then that person must prove their title that enables them to bring the recovery action and thus where extinction of title is raised by the person sought to be ejected, the burden is on the person bringing the recovery action to prove that his or her title has not been extinguished thereby proving good standing to bring the claim;”

[23] The court must therefore carefully examine the intent of the defendant to see whether she was in open, undisputed and undisturbed possession of Lot 112, whether she possessed the property to the exclusion of all others and whether she did so for the statutory period of at least 12 years.

[24] With respect to her possession of the property, the defendant maintains that after the migration of the claimant she was solely responsible for the payment of property taxes, for the construction of the dwelling house, payment of the further monthly instalments of the purchase price and for the general maintenance of the property. She is therefore asking the court to find that these acts were done with the intent of exercising ownership of the property to the exclusion of the claimant and thereby resulting in him being dispossessed of any interest therein.

[25] As was pointed out in the ***Lois Hawkins*** case dispossession arises where there is a sufficient degree of physical custody and control over the property by the dispossessor coupled with an intention to exercise such custody and control over the said property for his or her own benefit. In the instant case, the defendant's actions demonstrate a sufficient degree of control and custody of the property for the purposes of establishing that dispossession arises.

[26] In addition, in light of the defendant's claim of extinction, the burden of proof would then be on the claimant to prove that his title has not been extinguished thereby proving good standing to bring the claim as expounded by Sykes J in the ***Lois Hawkins*** case. In determining this, the court must now examine whether the acts

of dispossession, which have been found to have been exhibited by the defendant, occurred for the statutory period of 12 years as required under the Limitation of Actions Act.

- [27]** By her evidence, the defendant stated that she was not aware as to when exactly the claimant migrated. However, it is not in dispute that the claimant left the property and in fact, the Island, in November 1992. If it is accepted that the defendant took control of the property as at that date, then time would start to run as of then for the purposes of meeting the requirement of the statutory period prescribed in the Limitation of Actions Act, that is, November, 2004.
- [28]** The claimant in his evidence states that he returned to the Island in 2004 and went to Lot 112 where he met with the defendant and asked her to account to him in relation to rent that was collected from a tenant on the property. He claims that this led to a heated argument causing him to have to leave the premises. Though it was not clear from his viva voce evidence as to when exactly in 2004 he arrived in Jamaica, it can be discerned from his passport, the relevant pages of which were tendered into evidence that he was landed in the Island on March 9, 2004. This is also consistent with property tax receipts tendered by him showing that he made property tax payments in relation to Lot 112 in March of 2004. In light of this evidence, the court finds that the claimant returned to the Island in March 2004.
- [29]** It is not disputed that there was an argument between the parties at Lot 112 when the claimant visited in 2004. Whilst the defendant denies that she was asked by the claimant to account to him for rent collected, she proffers no explanation as to what this argument was about. When viewed in the context of the claimant's conduct in paying the property taxes and making efforts (though unsuccessful) to execute the Instrument of Transfer for the property, in the absence of an explanation from the defendant as to the reason for the argument, the court finds on a balance of probabilities that the argument was as a result of the claimant seeking to exercise his rights over the property. It is within this context that the court accepts the evidence of the claimant that he enquired of the defendant of

rent that had been collected and that it was this enquiry that led to the heated argument that ensued.

[30] On a balance of probabilities therefore, the court is of the view that the claimant was seeking to assert his proprietary rights over Lot 112 when he returned to the Island in March, 2004 and attended there. As a result, the defendant's possession would have been disturbed and could not be viewed as having been undisputed for the statutory minimum period of twelve (12) years.

[31] It is worthy of note at this point that any claim for adverse possession would be against the paper holder. In ***Ramnarace v Lutchman*** [2001] 1 WLR 1651, Lord Millett stated at paragraph 10 that:

*"[10] Generally speaking, adverse possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse if it is enjoyed by a lawful title or with the consent of the true owner."*

[32] The defendant under cross examination admitted to making payments on account of the purchase price of Lot 112 to the Urban Development Corporation (UDC) from 1992 to 1996. This was pursuant to an agreement with the UDC for the purchase of the land. Though the written agreement for the purchase of the property from the UDC reflected only the claimants name, it was agreed that both parties were purchasing the property and the defendant's name would have been added at a later date. She would therefore have been in possession of Lot 112 with the UDC's consent and based on the circumstances would have failed to establish that her possession of the property was adverse to the interests of the UDC.

[33] Moreover, the UDC being a government entity and the statutory period for the adverse possession of government land being 60 years, any such claim against the UDC in the circumstances of this case would have been fraught with challenges.

[34] On a balance of probabilities, the court finds that the statutory minimum period has not been met by the defendant.

**What is the effect of the Registration of the transfer in the names of the Claimant and Defendant as joint tenants?**

[35] Counsel for both parties relied on sections 68, 70 and 71 of the Registration of Titles Act, 1889 (RTA) which relate to the indefeasibility of title except in certain circumstances and subject to the subsequent operation of any statute of limitations. Counsel for the defendant did so in support of her contention that the registration of the parties as joint tenants in January 2017 was insufficient to reverse the ouster of the claimant by the defendant who she posits had previously been dispossessed. Counsel for the defendant submits that a joint tenant can be dispossessed of his/her interest in property by another and uses the authority of **Wills v Wills** in support of this contention.

[36] On the other hand, counsel for the claimant, in referring to the judgment of Mangatal J in the case of **McFarlane v Eugster** [2003] HCV 0144, argued that the combined effect of these sections is that the certificate of title is conclusive evidence of [the registered proprietor's] proprietorship of the land in question. She refers to the judgment in which it was stated at paragraph 24 that:

*“The Privy Council in my judgment have helped to make it crystal clear that only a time period of adverse possession **subsequent** to a particular registration can be counted against that particular registered proprietor.”*  
[emphasis added]

[37] In the instant case, the defendant's acts of dispossession preceded the registration of the transfer. Hence, in light of the decision in **McFarlane v Eugster**, any claim by the defendant for adverse possession against the claimant would only have materialised after the registration of the property in their joint names.

[38] Sections 88 and 89 of the RTA speak to transfers of registered land and the effect of such transfers. They provide as follows:

*“88. The proprietor of land, or of a lease, mortgage or charge, or of any estate, right or interest, therein respectively, may transfer the same, by transfer in one of the forms A, B or C in the Fourth Schedule hereto; and a woman entitled to any right or contingent right to dower in or out of any freehold land shall be deemed a proprietor within the meaning hereof. Upon the registration of the transfer, the estate and interest of the proprietor as set forth in such instrument or which he shall be entitled or able to transfer or dispose of under any power, with all rights, powers and privileges thereto belong or appertaining shall pass, to the transferee; and such transferee shall thereupon become the proprietor thereof, and whilst continuing, such shall be subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if he had been the former proprietor, or the original lessee, mortgagee or annuitant.*

*89. By virtue of every such transfer as is herein mentioned, the right to sue upon any mortgage or other instrument, and to recover any debt, sum of money, annuity or damages, thereunder (notwithstanding the same may be deemed or held to constitute a chose in action), and all interest in any such debt, sum of money, annuity or damages, shall be transferred so as to vest the same at law as well as in equity in the transferee thereof;*

*Provided always that nothing herein contained shall prevent a court from giving effect to any trusts affecting such debt, sum of money, annuity or damages, in case the transferee shall, as between himself and any other person hold the same as a trustee.”*

**[39]** The defendant admits that an Instrument of Transfer was executed by her in January of 2017 and was thereafter registered on the Certificate of Title for Lot 112 thereby vesting the property in the names of the claimant and defendant as joint tenants. The defendant signed said instrument on January 12, 2017 and her doing so gives rise to the inescapable inference that she acknowledged that the claimant was to have an interest in the property and that she agreed that they were to hold Lot 112 as joint tenants. Pursuant to sections 88 and 89 of the RTA therefore, the effect of the registration of the transfer would serve to vest both parties with legal and beneficial interest in the property.

**[40]** If the defendant had wished to dispute the claimant’s interest in the property, she should not have signed the Instrument of Transfer but should have sought a declaration from the Courts stating her sole entitlement to the property.

**What effect does the financial contributions of the parties have?**

- [41] The claimant argues that he is entitled to a half interest in Lot 112 as a result of the contributions he has made to its acquisition and development. He argues that he entered into negotiations with the UDC for the purchase of Lot 112 and reached an agreement with them to purchase same for \$8,000.00. In 1989, he paid a deposit of \$800.00 pursuant to said agreement with the understanding that the balance of the purchase price would be satisfied by way of monthly instalments, such instalments to conclude sometime in 1996. The claimant gave evidence that these monthly payments were borne solely by him until November 1992 when he migrated.
- [42] The defendant gave evidence that she received no financial assistance from the claimant with regard to the maintenance of the property after he migrated and she exhibited receipts in support of her contention that she was the one who carried out the construction on the property and that she was solely responsible for making the further payments on account of the purchase price and paying the property taxes after the claimant's migration.
- [43] Though the claimant agrees that the defendant would have taken over the monthly payments upon his departure, he maintains that he continued to assist by allowing his share of the profits from a boating business operated by them to be put towards the monthly payments. The defendant counters this by stating that the claimant's earnings consisted of a commission being paid to him for taking tourists out to snorkel, fish and cruise. This aspect of the business, she argues, did not continue after the claimant migrated and consequently, any sums paid towards the monthly payments thereafter were made solely by her.
- [44] The claimant avers that when he migrated to the United States, the dwelling houses on the property were substantially complete. However, under cross-examination, it was borne out that there were no windows or doors, no driveway nor awning and the structure was unpainted and untiled. Moreover, there was no

system for the provision of water and there was no electricity. Whilst the defendant initially stated that the claimant did not carry out any construction on the property, she later admitted under cross-examination that when she moved onto the property she had to complete construction by having tiling done, windows and doors installed and additional wiring done to the dwelling house so as to provide electricity to the property. Counsel for the claimant suggested to the defendant under cross-examination that the receipts tendered by her in this regard, when totalled, were insignificant in the context of her claim that she undertook substantial construction works to complete the dwelling house. The defendant countered this by stating that the majority of her receipts were removed from the dwelling house by the claimant in 2008 when he stayed there.

**[45]** The claimant does not dispute the defendant's assertions that additional work was done and improvements made to complete the dwelling houses on the property. However, he did not provide any evidence or supporting documentation to substantiate his position that his share of profits from the boating business contributed to the monthly payments or the additional works. The court therefore finds that on a balance of probabilities, although both parties made contributions to the acquisition and improvement of Lot 112, the monthly payments made after November, 1992 and the additional works to complete construction of the dwelling houses were made solely by the defendant. The court finds therefore, that on a balance of probabilities the defendant has shown that she expended greater sums than the claimant in respect of the property thereby rebutting the presumption that the parties should be entitled to an equal share therein.

## **Conclusion**

**[46]** I wish to acknowledge the detailed, written submissions provided and the authorities cited and relied upon by counsel for both parties which assisted the court greatly in arriving at its decision. Each authority was read and taken into account in treating with the issues herein.

**[47]** The court has carefully reviewed the affidavit evidence as also the evidence given under cross-examination by the parties and finds on a balance of probabilities that the claimant did not abandon his interest in Lot 112 nor was he dispossessed of his interest therein. Further, the effect of the execution and registration of the Instrument of Transfer in 2017 served to vest the claimant and defendant with a legal and beneficial interest in the property. As joint tenants, they would each be entitled to the entire property, however, in light of the claimant's desire to realise his interest, the justice of the case requires that in order to accurately reflect the unequal contributions made by the parties, it is appropriate for the joint tenancy to be severed and for them to hold as tenants-in-common in unequal shares.

**[48]** In light of the foregoing, it is hereby ordered as follows:

1. It is hereby declared that the claimant is entitled to a one-third (1/3) share and the defendant a two-thirds (2/3) share respectively in ALL THAT parcel of land part of Orange Bay Estate in the parish of Hanover being the Lot numbered One Hundred and Twelve on the plan of part of Orange Bay and being all that land comprised in Certificate of Title registered at Volume 1368 Folio 632 of the Register Book of Titles.
2. The said property, being ALL THAT parcel of land part of Orange Bay Estate in the parish of Hanover being the Lot numbered One Hundred and Twelve on the plan of part of Orange Bay and being all that land comprised in Certificate of Title registered at Volume 1368 Folio 632 of the Register Book of Titles, shall be valued and a valuation report prepared by a licensed real estate valuator to be agreed upon by the parties within fourteen (14) days of the date hereof failing which one is to be appointed by the Registrar of the Supreme Court. The cost of said valuation report shall be borne by the parties in accordance with their proportionate shares in the property.
3. The defendant is to pay to the claimant, a sum representing one-third of the value of the said property being ALL THAT parcel of land part of Orange

Bay Estate in the parish of Hanover being the Lot numbered One Hundred and Twelve on the plan of part of Orange Bay and being all that land comprised in Certificate of Title registered at Volume 1368 Folio 632 of the Register Book of Titles in which event the claimant shall execute an Instrument of Transfer in favour of the defendant. Such payment to be made within ninety (90) days of preparation of the valuation report.

4. Should the defendant fail to pay the said amount to the claimant within the time stipulated, the said property being ALL THAT parcel of land part of Orange Bay Estate in the parish of Hanover being the Lot numbered One Hundred and Twelve on the plan of part of Orange Bay and being all that land comprised in Certificate of Title registered at Volume 1368 Folio 632 of the Register Book of Titles, shall be sold by private treaty on the open market and the proceeds of sale divided between the claimant and the defendant in accordance with their proportionate shares in the said property.
5. Should either party fail or be unable to execute an Agreement for Sale and/or Instrument of Transfer within fourteen (14) days of same being produced for execution, the Registrar of the Supreme Court shall execute the Agreement for Sale and/or Instrument of Transfer in place of the defaulting party and said execution shall be legally valid and effective as if it had been effected by the defaulting party.
6. The claimant's Attorney(s)-at-Law shall have carriage of sale of the said property being ALL THAT parcel of land part of Orange Bay Estate in the parish of Hanover being the Lot numbered One Hundred and Twelve on the plan of part of Orange Bay and being all that land comprised in Certificate of Title registered at Volume 1368 Folio 632 of the Register Book of Titles.
7. Costs to the claimant to be taxed if not agreed.
8. Liberty to apply.

9. Claimant's Attorney(s)-at-Law to prepare, file and serve the order herein.