



[2015] JMSC Civ 130

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

**IN CIVIL DIVISION**

**CLAIM NO. 2010HCV0449**

<b>BETWEEN</b>	<b>PALNAMA KANDAPPA</b>	<b>CLAIMANT</b>
<b>A N D</b>	<b>PAMELA GRAHAM</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>A N D</b>	<b>MARCIA BROWN</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>A N D</b>	<b>WINSTON GRAHAM</b>	<b>3<sup>RD</sup> DEFENDANT</b>

**Mrs. Tamara Francis Riley-Dunn instructed by Nelson-Brown Guy & Francis for the Claimant.**

**Mr. Vernon Daley instructed by Chen Green & Company for the Defendants.**

**Heard: 8<sup>th</sup> and 9<sup>th</sup> June and 10<sup>th</sup> July, 2015**

**Trusts – Constructive trust – Claimant sharing forty-two year relationship with legal owner – Whether claimant and legal owner set up home together – Whether common intention to share beneficial interest - Legal owner transferring property by way of gift.**

**Evan Brown, J**

**Background**

[1] The defendants, who are siblings and offsprings of Thomas Augustus Graham, are the registered proprietors of 34 Conway Drive, Kingston 20 shown on the Register Book of Titles at Volume 1057 Folio 881. The land was transferred to them and their mother (now deceased) as joint tenants, by way of gift on the 11<sup>th</sup> November, 1997 by Thomas Augustus Graham. Mr. Graham had been the sole registered owner from the 23<sup>rd</sup> September, 1970. At that time 34 Conway Drive was a vacant lot.

[2] The year before Mr. Graham became the registered owner, he met the claimant. From 1969 until his death on 18<sup>th</sup> June 2008, Mr. Graham had an intimate relationship with the claimant. As part and parcel of their relationship, the claimant and Mr. Graham came to occupy sections of the house that was built on the land.

[3] However, 34 Conway Drive was not the only premises to which Mr. Graham had ties. He had ties, ties that would bind later, at 62 Woodpecker Avenue, Kingston 11. Living at 62 Woodpecker Avenue were the defendants and Mrs. Sylvia Graham, his wife. Sylvia became his wife on 14<sup>th</sup> June 1988. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants, and apparently Mrs. Graham, knew about the intimate relationship Mr. Graham shared with the claimant.

[4] Their awareness of that relationship between the claimant and Mr. Graham dated back to about the time Mr. Graham conducted business closer to 62 Woodpecker Avenue. Mr. Graham was a barber in business on his own account at 124 Waltham Park Road, Kingston 11. In that establishment Mr. Graham employed 5 or 6 persons, including the 3<sup>rd</sup> defendant. The 2<sup>nd</sup> defendant would go to the business place on weekends to perform cashiering duties.

[5] At the barber shop the claimant was seen visiting or sewing on a sewing machine in a corner. The sewing machine was one that Mr. Thomas had bought. Before it was put to use at the barber shop, the sewing machine was at 62 Woodpecker Avenue. That arrangement continued until Mr. Graham opened a boutique, Thomas House Fashion, at 114 Waltham Park Road, Kingston 11.

[6] While Mr. Graham continued to run the barber shop, the claimant ran the boutique. The boutique's customer base grew and at one point six (6) other ladies were employed there. The customers had a choice of custom and ready-made apparel.

[7] Amidst the bustling business activities at the Waltham Park Road addresses, construction commenced on the lot at 34 Conway Drive. The house was constructed in stages. In the end it had three sections. The largest section had 2 bedrooms, living and dining area, kitchen, bathroom and verandah. The larger section had 2 rooms, kitchen and bathroom. The remaining section had 2 rooms and a bathroom.

[8] At some point, the claimant came to occupy the largest section of the house at 34 Conway Drive. Also, in 1988, coincidentally the same year Sylvia became his wife, Mr. Graham relocated his barber shop to that address. The verandah area of the section the claimant occupied was used as the barber shop. The boutique was closed before the relocation of the barber shop.

[9] Sometimes Mr. Graham and the claimant would sit and talk on the verandah. Joining them on the verandah at times was Mr. Ezekiel Bariffiee. Mr. Bariffiee lived nearby. However, Mr. Bariffiee knew Mr. Graham and the claimant from the days of the barber shop and the boutique were opened at Waltham Park Road. According to Mr. Bariffiee, he met both at the same time as “they both operated a business together.” Mr. Graham, who Mr. Bariffiee referred to as Thomas, was his barber. The claimant, who he called Ms. Lena, had a boutique beside the barber shop.

[10] When Mr. Bariffiee visited 34 Conway Drive he observed a four bedroom house. According to him the barber shop was attached to the front of the house. Ms. Lena and Thomas were in one bedroom. Ms. Lena’s son and the son’s wife occupied another room, while the two other rooms were rented.

[11] The claimant was quite the homemaker, according to Mr. Bariffiee. She took care of Mr. Graham like any good wife would care for her husband. Indeed, all along Mr. Bariffiee thought Mr. Graham and the claimant were man and wife. To Mr. Bariffiee, Mr. Graham, the claimant and her son were the picture of one big happy family. Not only did the claimant care for Mr. Graham, she also planted fruit trees in the yard.

[12] Like Mr. Bariffiee, Ms. Murlina Barrett was a constant visitor to 34 Conway Drive. She sold trimmings to the claimant. On her visits Ms. Barrett saw Mr. Graham there. She observed the claimant cooking for him and tending to him. Ms. Barrett said that even the claimant’s children and grandchildren all lived at the house at one time or another. Much like Mr. Bariffiee, she spoke of the claimant planting trees and giving attention to landscaping.

[13] Whatever happiness Mr. Bariffiee perceived between the claimant and Thomas Augustus Graham was interred with his bones. Soon after Mr. Graham’s funeral, the

2<sup>nd</sup> and 3<sup>rd</sup> defendants visited 34 Conway Drive. The tenants were instructed to cease paying rent to the claimant. Instead, the rent should be paid to the 2<sup>nd</sup> defendant. The claimant was later served with a notice to quit and deliver up possession of the premises. An order for possession was obtained from the Resident Magistrate's Court for the Corporate Area on the 2<sup>nd</sup> December, 2010. She was evicted from the premises in furtherance of that order.

### **The Claim**

[14] It was against that background, and contemporaneous with the action in the Resident Magistrate's Court that this claim was filed on 2<sup>nd</sup> February, 2010. The claim, as initially filed, contended that the defendants and the claimant "are equally beneficially entitled to the premises at 34 Conway Drive," pursuant to a constructive trust or, in the alternative, pursuant to a resulting trust.

[15] An amended claim form was filed on the 3<sup>rd</sup> April, 2013. In the amended claim form the claimant sought the following:

- "1. A declaration that one-half of the legal and equitable interest in the property known as all that parcel of land 34 Conway Drive, Patrick City, Kingston 20 in the parish of Saint Andrew being all that parcel of land comprised in Certificate of Title registered in Volume 1057 Folio 881 of the Register Book of Titles (hereinafter referred to as "the subject premises") is being held by the Defendants on trust for the Claimant.*
- 2. A Declaration that the Claimant possessed this one-half share in the subject premises before it was transferred to the Defendants by Thomas Augustus Graham on the 11<sup>th</sup> day of November 1997.*
- 3. An Order that the Defendants do the following:*
  - (a) Note the deaths of Thomas Augustus Graham and Sylvia Graham on the Certificate of Title for the subject premises as their sole expense;*

- (b) *Execute an Instrument of transfer adding the Claimant's name to the Certificate of Title for the subject premises so that it reflects that she is entitled to a 50% share of the legal and equitable interest in the said property, with the Defendants sharing the remaining 50% in equal shares absolutely.*

### **Applicable Law**

[16] This area of the law has been much traversed. The relevant law was perspicuously encapsulated by Lord Denning in **Cooke v Head** [1972] 2 All ER 38, 41:

*"Whenever two parties by their joint effort acquire property to be used for their joint benefit, the courts may impose or impute a constructive or resulting trust. The legal owner is bound to hold the property on trust for them both. This trust does not need any writing. It can be enforced by an order for sale, but in a proper case the sale can be postponed indefinitely. It applies to husband and wife, to engaged couples, and to a man and his mistress, and may be to other relationships too."*

So, the indispensable conditionalities for the imposition of a trust are that the property was jointly acquired by the parties for their joint benefit.

[17] However, it must first be demonstrated that the property was a joint acquisition. In order to do that, the claimant must show, firstly, that there was a common intention for her to obtain a share of the property. Secondly, evidence must be led to show that, the claimant acted to her detriment in reliance on that common intention. A reference to the head note of **Grant v. Edwards and Another** [1986] 1 Ch. 638, makes the point. I quote:

*"where a couple chose to set up home together and a house was purchased in the name of one of the parties, equity would infer a trust if there was a common intention that both should have a beneficial interest in the property and the non-proprietary owner had acted to his or her detriment upon that intention; that there had to be conduct from which the common intention could be inferred and conduct on the part of the non-proprietary owner, whether directly or indirectly referable to the purchase of the property, that could only be explained by reference to a person acting on the basis of having a beneficial interest in that property."*

[18] The context in which the claimant sought to prove her case was, to borrow a phrase from ***Cooke v Head***, that of a man and his mistress. Although, to be fair to the claimant, I am compelled to use the word 'mistress' guardedly, as she never saw herself as Thomas Augustus Graham's mistress, in the common usage of the word. Indeed, in their 42 years together, according to her, absent a formal wedding ceremony, Thomas Augustus Graham led her, and the world, to believe that she was his wife.

[19] So notorious was this belief that everyone who knew them styled her as Mrs. Graham or, Mrs. Thomas, as Thomas Augustus Graham was known to some as Mr. Thomas. That ascription of status turned out to be nothing but a massive deception, if the claimant is to be believed, as it was not until the commencement of these proceedings that she became aware that she was in fact his mistress from 1988. At no time during their relationship was the claimant aware that the man who proclaimed her his wife had a like relationship with Sylvia, who became Mrs. Graham.

[20] Issue was jointed with that postulated residential arrangement. Falling therefore for my determination is this question, did the claimant live with Thomas Augustus Graham soon after they met until the day of his death, 18<sup>th</sup> June, 2008? According to the claimant, Thomas Augustus Graham invited her to live with him in Kingston when her last child was eleven months old. They lived at various addresses, in rented premises, until finally at the 34 Conway Drive.

[21] Although the claimant provided two addresses at which she said they lived together, the proof of cohabitation was conspicuously absent. While I accept that much water had flowed under the flat bridge between 1969 and the filing of the claim, there was no evidence of any joint rental agreement; neither a lease nor rental receipt was tendered. What the claimant relied on to support her contention that she had set up house with her deceased partner was the oral testimony of two witnesses.

[22] Mr. Ezekiel Barriffe, the first of the claimant's two witnesses, said he saw them together at 34 Conway Drive and, as I understood him, that was from 1988 to 2008. Mr. Barriffe knew and socialized with them at that address. Unsurprisingly, he assessed

their relationship to be that of man and wife. Although he was not cross-examined, the evidence did not disclose the bases upon which he came to that conclusion, save for seeing them together at that address over the years.

[23] There was one bit of evidence, which, at first blush, has the appearance of being capable of supporting Mr. Bariffe's conclusion that they lived together as man and wife. Mr. Bariffe described the house at 34 Conway Drive and spoke to who occupied the respective sections. In doing that, he said the claimant and Thomas Augustus Graham were in one bedroom. Never mind that he did not bother to say which bedroom they occupied, there was not even a hint of how he came to know this. There was no evidence that he ever ventured beyond the verandah or, that it came up in a conversation between the three.

[24] The other assertions of Mr. Bariffe were no more uniquely characteristic of a residential relationship than a visiting one. So that, to say that they sat on the verandah in the evenings did not advance the claimant's cause beyond visiting. Equally, to assert that the claimant was 'attentive' to Thomas Augustus Graham and cared for him like any good wife would, did not move their relationship from the manifestation of love and affection also associated with a visiting relationship.

[25] In addition to that, again, although Mr. Bariffe was not challenged, in weighing his evidence I bear in mind his anxiety to see the claimant restored to 34 Conway Drive. There is no escaping the impression that he considered the eviction of the claimant from 34 Conway Drive an affront, an outrage even, not only to the claimant, but to all senior citizens who had worked hard to build their homes. In his words, the claimant was "thrown out like trash."

[26] Ms. Murlina Barrett, the second witness, seemed less perturbed that the claimant "was thrown out of the house by the defendants." Ms. Barrett asserted that as far as she was aware the claimant and Thomas Augustus Graham lived together at 34 Conway Drive. It appears Ms. Barrett came to that conclusion from seeing Thomas Augustus Graham and the claimant at the house and at social gatherings.

[27] However strong Ms. Barrett was in her assertion of cohabitation, she was weak on the supporting foundation for that assertion. When pressed under cross-examination, it turned out that her visits to the house were no more than once per month. In addition, she gave no evidence of what she saw to propel her to the conclusion that they were cohabiting. It did not appear that she ever saw, for example, his clothes on the line. Neither did she see him in a state of dress or undress which could be described as typical for someone at his home. I, therefore, conclude that her evidence is too equivocal to allow for a finding, even on a balance of probabilities that Thomas Augustus Graham lived at 34 Conway Drive with the claimant.

[28] Whereas the witnesses may be forgiven for being unconvincing on the point, since they were outsiders, the claimant is undeserving of the same sympathy. I will attempt to demonstrate why I came to the position that the claimant was discredited on the point. It must be borne in mind that the case for the claimant was that she had set up house with Thomas Augustus Graham. They lived together, although he would go and visit his children at Woodpecker Avenue and did those things a father would do, such as take them to school. She was his live-in woman, in essence.

[29] Against that background, it was more than a little startling that the claimant agreed with cross-examining counsel that she was Thomas Augustus Graham's 'outside lady'. It is plainly incongruent to, in one breath, assert that she was his live-in woman, and in the next to agree that she was his 'outside lady'. The admission that she was the 'outside lady' was strengthened by the evidence from the claimant of her deceased partner's dying wish.

[30] Having taken ill at her home, Thomas Augustus Graham commanded Richard, the claimant's son, to take him home. Her evidence bears rehearsing, without being paraphrased:

*"him call Richard and tell Richard fi carry him home, fi carry him go  
To Woodpecker Avenue, him want to go do something at him house."*

It seems clear to me that both the claimant and Thomas Augustus Graham considered 62 Woodpecker Avenue to be his home. Her choice of word and phrase, 'home' and 'him house' betrays Thomas Augustus Graham's state of mind. His wish was not simply



to see his children before passing from this world but to do so in the place he knew as home.

[31] The consequence of the foregoing is that I do not accept that Thomas Augustus Graham had set up home with the claimant. At best, what they had was a glorified visiting relationship in which he would sleep over sometimes. Although Mrs. Marcia Brown, the 2<sup>nd</sup> defendant, was reluctant to say her father was absent from the home some nights, the conclusion that he was, is compelling. So irrepressible was this conclusion that even defence counsel was moved to suggest to Mrs. Brown, “your father would be absent from home many nights,” even though that was not her case.

[32] Although defence counsel went on to correctly put her case, the slip was clearly Freudian. ‘Home’ for Thomas Augustus Graham was 62 Woodpecker Avenue, not 34 Conway Drive. In light of that fact, and the further fact that this was a man who openly conducted his romantic affairs, would he not have slept at 34 Conway Drive some nights? I, most certainly, do not find it farfetched, that the allure of the woman, whose comforts captivated him for 42 years, would have lulled him into clinging to her bosom beyond night fall.

### **Common Intention to share interest**

[33] So, this was not a case in which the parties chose to set up home together. That notwithstanding, was 34 Conway Drive acquired with their joint effort? Since the property was acquired in the name of Thomas Augustus Graham only, was there a common intention that the claimant should take a share of the beneficial interest in 34 Conway Drive?

[34] A good place to commence this inquiry is to see if there was an agreement that the parties were both to have beneficial interest in 34 Conway Drive. The claimant contended that there was an agreement between her and Thomas Augustus Graham to use the \$2,000.00 her father gave her as a parting gift, to purchase land on which they could build a home. In the particulars of claim filed on the 3<sup>rd</sup> April, 2013, at paragraph 10, it was averred that they discussed, and agreed to purchase the property in August,

1979. However, in her witness statement, filed on the 23<sup>rd</sup> September, 2014, the claimant said 'August of 1979' was incorrect and that it might have been in August, 1969.

[35] She was taken to task on the accuracy of the time of that discussion. In response, her powers of recall fell short but I bear in mind that she was 76 years old and the matters in question were decades old. Even bearing that in mind, her evidence showed that no such discussion took place in 1969 by virtue of the chronology of events to which she appended the discussion.

[36] The claimant agreed that she met Thomas August Graham in about July, 1969 when her son Richard was two months old. Further to that, she said the invitation to cohabit with Thomas Augustus Graham came when he was eleven months old. She agreed that the invitation would therefore have been extended in about July, 1970. Since the discussion came after the invitation to cohabit, the discussions would have taken place in 1970, at the earliest.

[37] The claimant's unreliability aside, her credibility was eroded under cross-examination. As I watched her when she answered questions in the area, her demeanour conveyed to me that it was more than failing memory that was affecting her. There was a noticeable reluctance to answer when the incorrectness of the discussion taking place in August, 1969 was put to her. Therefore, I concluded that she did not wish to be frank on the issue. The consequence of that is, I not only reject that the discussion took place in August, 1969, I also reject the assertion that the discussion took place at all.

[38] In my opinion, the dithering on the claimant's case concerning when the alleged discussion took place is really the consequence of the claimant being caught in a tangled web of deceit. If matters had been left at when the discussion took place, it might have been reasonable to write it down to a dull and hazy memory. However, consistent with the averment that the discussion took place in August 1979, the claimant

asserted that she “resided at the subject premises since it was purchased in September of 1979,” at paragraph 20 of the particulars of claim.

[39] The difficulty with all of that is that the land was transferred to Thomas Augustus Graham from the 23<sup>rd</sup> September, 1970. Therefore, not only was the assertion of the discussion to purchase incorrect but equally so was the year of purchase. It is plain that the inconsistency between the averment of the year the discussion allegedly took place and the date of transfer was discovered subsequent to the filing of the statement of case.

[40] Similarly, the correct year of purchase is given in the witness statement but, in this instance, no link is forged with the incorrect averment. This too, served to undermine the claimant’s credibility. The ultimate result is that I find that there was no explicit agreement between the claimant and Thomas Augustus Graham for her to share in the beneficial interest of 34 Conway Drive.

[41] Since the claimant contended that the purchase of the property was discussed and agreed, her attitude to the discovery of the property being in the name of Thomas Augustus Graham only makes her all the more unconvincing. The claimant said she did not “insist” on her name being added to the title of 34 Conway Drive. To use the word ‘insist’ raises the specter of the matter being raised, even indirectly. Yet there was no evidence that she ever broached the subject with Thomas Augustus Graham. If she did, he might have offered an excuse or an explanation for the failure to add her name as a legal owner, as was the case in ***Grant v Edwards***, *supra*.

[42] Having found that there was no agreement for the claimant to take a share in the beneficial interest of 34 Conway Drive, the question remains whether there is evidence from which that common intention may be inferred. That is, I must have regard to their conduct, since, as was observed in ***Gissing v Gissing*** [1971] A.C. 886, 906, parties in the position of the claimant and Thomas Augustus Graham, often do not use express words to communicate their intention to each other. Perhaps the best evidence from which the common intention may be inferred is a contribution to the deposit, whether

direct, or indirect. In this case, it appears the lot was a cash purchase. There is no mortgagee noted in the transaction.

[43] The consideration noted on the registered title is \$4,800.00. Did the claimant contribute any portion of the purchase price? The claimant said Thomas Augustus Graham told her he used the \$2,000.00 she gave to him, the gift from her father, and his own money to purchase the property. Her contribution to the purchase price was therefore just shy of 50% of the total purchase price, on her account. A contribution of nigh one half the purchase price would be a very persuasive indicator that from the outset a common intention existed for the claimant to share equally in the beneficially interest in 34 Conway Drive.

[44] Since the claimant identified the gift from her father as her major source of funds, I felt that his means bore some relevance to the issue. In answer to the court, the claimant said her father owned five acres of land. It appears that the five acres were subdivided into smaller plots. Her father tilled his portion and the three sons tilled their individual portions. The size of each plot was therefore not ascertainable.

[45] Whatever the actual size of his farm, having subdivided the five acres, it seems safe to conclude that he was a small farmer. On this small farm, he produced cash crops and sold them to the factory. She had no idea what was the annual take from that activity. The evidence does not otherwise allow me to even hazard a guess as to what the claimant's father's annual income was.

[46] On the other side of the account, it does appear that his maintenance obligations might have been challenging. The claimant said that she was the 9<sup>th</sup> and 18<sup>th</sup> child for her parents. That evidence was not fine tuned to say which parent had nine and which had eighteen. Neither was it said how many of them her parents had responsibility for in 1969. Whichever parent had the greater number of children and however many they had economic responsibility for, one thing is sure that was not a few mouths to feed.

[47] Even if the claimant's father was the man of substance the gift suggests, the probability of which I remain to be persuaded, it is wholly unclear why her father would

part with what was, judging by the price of the land, a large sum of money. I doubt that the gift proceeded from the heart of a doting father, since it came by request, lacking the spontaneity associated with a strong parental bond. And here I remind myself that no evidence was elicited about the relationship the claimant had with her father.

[48] If it was not love and affection, might it have been the discharge of patriarchal obligation? Surely, it was no dowry. Although the claimant had been raised to find a husband, her sixth child was only two months old when she was introduced to Thomas Augustus Graham and there was no talk of marriage between them. It appears to me that although Thomas Augustus Graham was no suitor, he was seen as a man who “could care” for her, evidenced by the fact of operating his own business.

[49] Against that background, I find it implausible that, in response to a request, the claimant’s father gave her \$2,000.00 so she “could build a life together” with Thomas Augustus Graham, as she said. I find that \$2,000.00 was just a convenient figure to strengthen her position that she contributed to the purchase price. I am fortified in this view as the claimant neither had any idea of the value of land at the time nor the value of \$2,000.00.

[50] In answer to the court, she said \$2,000.00 could buy a lot of things at the supermarket in 1970. I dare say, using the price of the land as a guide, it is highly unlikely that \$2,000.00 was a sum the average householder expended at the supermarket. Learned counsel for the defendants, in his submissions filed on 3<sup>rd</sup> July, 2015, helpfully provided an indexed update of \$2,000.00. Using the Consumer Price Index for June, 2015, that figure would be \$1.4m today. From either perspective, \$2,000.00 was a small fortune and I am unconvinced that a small cash crop farmer either had it, or had it and parted with it. I do not accept that the claimant received \$2,000.00 which she contributed to the purchase price for 34 Conway Drive. The matter did not end here.

[51] The claimant alleged that she had an independent source of income from which she contributed to the acquisition and improvement of the subject premises. At

paragraph 11 of the particulars of claim, she asserted, “at that time... [I] owned and operated a dress shop at 114 Waltham Park Road, Kingston 10.” In my view, “at that time” refers to 1979, which, again demonstrates the consistent use of 1979 as the year of reference and underlines the point made above concerning the gap between the statement of case and the registered title.

[52] More importantly, in 1970 when 34 Conway Drive was acquired the claimant neither owned nor operated a dress shop. Her own evidence was that in 1970 she got a job with Francis Keane as a seamstress. There she stayed until 1973 when she grew in confidence sufficiently to open her own business, according to her. In passing, I do not accept that the business which was opened at about this time was hers. It was called Thomas House of Fashion and was owned by Thomas Augustus Graham, who controlled the finances, although the claimant had the day-to-day management of it.

[53] Returning to the main point, accepting that the claimant was not in business in her own account at the time of the acquisition of 34 Conway Drive, from whence did she obtain funds to contribute to its acquisition as alleged? She gave no evidence of the income she received from Francis Keane. Indeed, she did not seek to rely on that. The reliance was on income from her business. It having been established that she neither owned nor operated her own business contemporaneous with the acquisition of 34 Conway Drive, I reject that she earned money sufficient to contribute to its acquisition.

#### **Did the claimant act to her detriment?**

[54] Since the claimant made no contribution to the purchase price of the lot, did she contribute to the building of the house which was later erected? If she contributed to the building of the house, it may be reasonable to infer that there was a common intention between the parties that she should share in the beneficial interest from the very beginning. Although the claimant gave a full description of her involvement in the building of the house, supplying labour and materials, the proof was not nearly as abundant.

[55] Nothing by way of documentary evidence was provided in support of the claim to having purchased materials. The claimant sought to explain the absence of documentary proof by saying the papers were lost when she was evicted from 34 Conway Drive and her things placed on the side of the street. Nothing prevented her from securing the papers even after she was evicted. I do not accept that having been seized with the foresight to retain the proof of her contribution, she would have stood by and watched that proof disappear, when her right to quiet enjoyment of the very property was being seriously challenged.

[56] The other contributions to which Mr. Bariffe made reference are not in and of themselves an exercise of ownership over land. He spoke to the planting of fruit trees and tending the yard. 34 Conway Drive was the place that she called home, whatever her legal status, and therefore the planting of trees and otherwise tending the yard are things that both short and long term tenants engage in.

[57] Far from acting to her detriment, I am firmly of the view that the claimant found in Thomas Augustus Graham a man who cared for her financially. Part of what made him eligible for introduction by her parents was his apparent economic means – a barber with persons in his employ. He was clearly business savvy. From operating his own enterprise to assigning the claimant, shall I say, a sewing corner, then expanding the sewing corner into a boutique, demonstrates that his was the entrepreneurial head.

[58] It was that entrepreneurial drive that carried over into the acquisition of 34 Conway Drive. This too was a business venture. This conclusion is supported by the use to which the house was put, in the main. The other two self-contained sections of the house were rented. Further, upon completion of construction in 1988, the barber shop was relocated to the verandah area of the claimant's living quarters. Viewed from that perspective, I cannot accept that Thomas Augustus Graham led the claimant to believe that 34 Conway Drive was their matrimonial home.

[59] Neither can I accept that the barber shop came to be at that address pursuant to the claimant's agreement. The reason for this is simply that the claimant and Thomas

Augustus Graham never had a relationship of equals. This was amply demonstrated when she expressed fear of being turned out of the house as the reason for not making any inquiries of Thomas Augustus Graham when the 3<sup>rd</sup> defendant accused her of causing strife in his mother's life.

[60] I accept that the claimant came to reside at 34 Conway Drive because of her intimate relationship with Thomas August Graham. Providing her with shelter was a part of the care package extended to her. As his 'outside lady', it certainly is not strange that she lived there rent free. In the same vein, I do not find it inconsistent with that relationship for the utility bills to have been in her name.

### **Conclusion**

[61] I conclude that the claimant has failed to prove that 34 Conway Drive was jointly acquired by her and Thomas Augustus Graham for their mutual benefit. There was no express agreement between them for her to take a beneficial interest in the property. Neither was there any conduct from which it could be inferred that there was a common intention for her to so benefit. Equally, I found no evidence that the claimant acted to her detriment from a common understanding that she would thereby obtain a beneficial interest in the property.

[62] Consequently, the claimant is not entitled to the declarations and orders sought in the claim form. Therefore, I give judgment for the defendants. Costs are awarded to the defendants, to be taxed if not agreed.