

defendant is held on trust for the claimant - Whether the claimant intended to make a gift of purchase of half share in the Toyota Wish Motor car to the defendant – Presumption of resulting trust – Presumption of advancement – Constructive trust – Common intention deduced from parties’ words and course of dealings – Deceit and misrepresentation – “Clean hands” principle of equity – Whether apportionment of shares in the property and motor car as between the claimant and respondent is necessary – Whether the claimant should be declared as being sole owner of the disputed property and motor car

Anderson, J.

THE CLAIM

[1] This claim concerns a dispute of registered land located at Fort Charles in St. Elizabeth, a Toyota Wish Motor car and a registered business, named “Villa Arcadia”. All of the mentioned properties are jointly registered in the names of the parties to this claim. The claimant filed a fixed date claim form and supporting evidence in respect of the mentioned properties seeking declarations and/or orders in respect of the Fort Charles property and the Toyota Wish motor car.

[2] The declaration the claimant has sought in respect of the Fort Charles property is that she is the beneficial owner of all the land and that the defendant holds his undivided one half share on the certificate of title on trust for the claimant. The claimant has also sought a declaration that the defendant is not entitled to any interest in the said land.

[3] The claimant has also sought declarations that the defendant transfers his half share in the Fort Charles property to her as well as his interest in the Toyota Wish Motor car to her.

[4] The claimant has sought no declaration in respect of the registered business, “Villa Arcadia”.

AFFIDAVIT EVIDENCE

[5] The claimant filed an affidavit in support of the fixed date claim form and a further affidavit. The evidence of the claimant is that she met the defendant in December of 2018 when she was in Jamaica on a visit from the USA. Shortly after, the claimant and the defendant formed an intimate relationship. During the course of the relationship, the defendant expressed his commitment to the claimant and led her to believe that he was committed to only her and had no other intimate relationship.

The Fort Charles property

[6] The claimant averred that she purchased the Fort Charles property by paying the full purchase price and then instructed her attorney to add the defendant's name to the title. The claimant averred that this decision was done based on the understanding that she and the defendant would establish a home together in Jamaica. The title for the Fort Charles property is registered in both parties' names as joint tenants. However, the claimant contributed the entire purchase price for the purchase of the property, which amounted to \$US 207,500.00. The defendant made no contribution towards acquiring the property. The claimant averred that before purchasing the property, the defendant spent almost all of his time with her. However, after the defendant's name was placed on the title to the property, the defendant became noticeably less interested in the claimant and spent less of his time, with her. The claimant provided evidence of the work that was done on the property. She stated that she made the arrangements for and paid for the entire replacement cost of the roof. The claimant stated that the defendant did no work on the pool repairs. According to the claimant, the defendant only assisted the claimant in identifying the contractor to repair the pool. However, the work done was sub-standard and the claimant had to pay additional funds to remedy the poor work. The defendant, along with his friends, painted inside the house, thereafter, the claimant paid them cash for the work done.

The Toyota Wish Motor car

[7] The claimant also averred that she was the one who purchased the Toyota Wish Motor car, but registered the vehicle in the joint names of her and the defendant, so that whenever she was in the USA, the defendant could use the motor vehicle. The claimant also placed the defendant's name on the motor vehicle certificate of title because of insurance purposes. The claimant averred that when she went to insure the vehicle, the insurance agent advised her that since the defendant was a new driver, it would be better to add his name to the title.

The business "Villa Arcadia"

[8] In March 2021, the claimant registered a business in the joint names of herself and the defendant and called it "Villa Arcadia". The claimant averred that she wishes to cancel the registration of the business.

End of the relationship

[9] After the claimant discovered the defendant had been intimate with other women and had one child outside of the relationship, the relationship ended. The claimant returned to Jamaica in December 2021 and took possession of the motor vehicle. The claimant requested that the defendant transfer to her, his undivided one half share in the Fort Charles property and his interest in the Toyota Wish motor car, on the bases that he made no contribution to their acquisition and their relationship was based on the defendant's lies and deceit, and falsely misleading the claimant into believing that he was in a committed relationship with her and that they would be living and working together. After the relationship ended, the parties continued to communicate with each other through WhatsApp messages.

Kino Edmond

[10] The claimant averred to not knowing Kino Edmond very well. The claimant admitted to speaking with Mr. Edmond when she retrieved her motor vehicle from the

defendant. The claimant does not recall telling Mr. Edmond that she bought the car for the defendant or the property for herself and the defendant.

[11] The defendant filed an affidavit in response to the claim and an affidavit of Kino Edmond. In his affidavit, the defendant claimed that he never told the claimant that he was singularly devoted to her. He gave the claimant one hundred percent of his time at her request. The defendant averred that the claimant told him that she wanted to purchase a house in Jamaica for both of them to live in, as well as for his children, and enjoy the little time she had left because she believed she might die at around sixty-three or sixty-five years old; and he was the one who looked after the property, which was being used as a villa. The defendant provided evidence of work he did on the property. The defendant stated that he arranged for the entire roof of the building to be changed, the cost of which was paid for by the claimant. The defendant claimed to have remodelled the swimming pool, painted the inside of the house, maintained the building and property grounds, did plumbing work and other maintenance.

[12] The defendant averred that he was instrumental in getting the property certified by health inspectors and the Tourist Board because the claimant wanted to operate the place as a business. It is since the breakdown of the relationship, that the claimant is now trying to deprive him of his half share in the property.

[13] The defendant averred that it was not the child that he fathered outside of the relationship that ended his and the claimant's relationship. The relationship ended because the claimant gave access to the Fort Charles property to the claimant's friend, Monica Hill. It is only after the breakdown of their relationship (the claimant's relationship with him), that the claimant is now trying to deprive the defendant of his share in the said Fort Charles property.

ISSUES

[14] The following issues arise for determination by this court:

- i. Whether legal ownership of the Fort Charles property registered in the joint names of the claimant and the defendant is held on trust for

the claimant or whether the claimant intended to make a gift of purchase of half share in the property to the defendant.

- ii. Whether legal ownership of the Toyota Wish Motor car registered in the joint names of the claimant and the defendant is held on trust for the claimant or whether the claimant intended to make a gift of purchase of half share in the motor car to the defendant.
- iii. Whether resulting trust principles or constructive trust principles should be applied, as a general rule in respect of cases such as this.
- iv. Whether equity should avail the defendant.

[15] I have read and considered the arguments and authorities provided by both the claimant and respondent and have taken into account their relevance to the determination of this claim. To the extent that any of same is/are not herein referred to, such is not meant to convey any form of disrespect to counsel, but is so, merely for the sake of brevity.

[16] The claimant's learned counsel, submitted that a resulting trust arose in favour of the claimant in respect of the disputed Fort Charles property and the Toyota Wish motor car. She also submitted that it was for the defendant to show that a resulting trust was rebutted. However, according to her, the defendant has not provided sufficient evidence to rebut the presumption of resulting trust. Counsel submitted that since the defendant was paid for the work he did on the property, the defendant did not act to his detriment based on a common intention. Even if the defendant had not been paid, the amount of work done by him is not sufficient to give rise to an equity in his favour.

[17] Learned counsel for the defendant argued that the starting point is that of a resulting trust. See **Dyer v Dyer** (1788) 30 ER 42. However, according to him, the presumption of resulting trust has been rebutted.

[18] Learned defence counsel, submitted that intention can change upon the breakdown of a relationship or marriage. However, the fact that there is a breakdown is not relevant in determining ownership, which is determined before the breakdown and at the time of acquisition. Subsequent events after the breakdown of a relationship or marriage cannot alter such intention - **Pettitt v Pettitt** [1969] 2 All ER 385. The starting point is that, where there is joint legal ownership, there is also joint beneficial ownership. The party seeking to rebut this presumption of ownership has the onus to show that the beneficial ownership goes in some other direction different from legal ownership. **Stack v Dowden** [2007] 2 AC 432 per Baroness Hale. If the claimant's intention was that the defendant should take a beneficial interest in the particular property, then that intention does not change because there is a breakdown of the relationship.

[19] Learned defence counsel, submitted that the claimant purchased the motor vehicle with the intention that the defendant is to be the sole owner of the car. The claimant's name was on the title for the motor car merely for convenience, so that, whenever she was in Jamaica she could use same without undue restriction.

[20] Also, it was his submission, that any promise made by the defendant to sign over the property and motor car to the claimant is of no legal significance since there was no consideration made for said promise.

Resulting trust

[21] At common law, the resulting trust is a rebuttable presumption by evidence that the person who financed the purchase money for the purchase of property is presumed to be the beneficial owner of that property, even though the property is purchased in the name of someone else. There are numerous authorities dealing with presumption of resulting trust. Some are **Dyer v Dyer** (op. cit) and **Maddern v Darlington** Claim No. 2010 HCV 02771, as submitted by learned counsel.

[22] This means that the starting point is that joint legal ownership equates to joint beneficial ownership. If therefore, that presumption is to be rebutted, evidence is needed to rebut same and that evidence must be clear and cogent. In that regard, see **Johnson v Boswell** [2022] JMCA Civ 31.

[23] A presumption of resulting trust can be rebutted by showing evidence that the purchaser had some other intention. This intention can be to make a gift of the purchase to the receiving party. The presumption can also be rebutted by the equitable principle of advancement, which occurs in instances where the gift of purchase is for a child or wife of the donor. The presumption can also be rebutted by way of a constructive trust, which will depend on the circumstances, and in which case where there is a common intention between the parties to share jointly in property, that common intention may change after the breakdown of the relationship or marriage.

Constructive trust

[24] An important case in the development of constructive trust principles in domestic property disputes, and which is helpful in the application of the present case is **Oxley v Hiscock** [2005] Fam 211. The relevant facts for consideration in **Oxley v Hiscock (op. cit)** are that the second and relevant property of an unmarried couple was registered in one of the parties' name, Mr. Hiscock. However, Mrs. Oxley had also provided financially to the purchase money in purchasing the property based on proceeds from the sale of her previous home. In addition to making unequal financial contributions to acquiring the property, the couple borrowed some of the money. The couple lived on the property for years, contributing to household expenses and property maintenance. The relationship ended and the property was sold. There was no express agreement between the parties about the shares. The case raised the question of where one of the parties in a couple's name is on the title and both parties contributed to the purchase price, whether there is a resulting trust. In answering the question, the court noted that not in all cases will there be a resulting trust.

[25] Mrs. Oxley filed an application for declaration that the sale proceeds were held on trust in equal share. She applied under the **UK Act, the Trusts of Land, and Appointment of Trustees Act 1996**. The court found that there was no agreement as to the extent of the parties' shares. The judge awarded her a share in the proceeds. Mr. Hiscock appealed, claiming a resulting trust. The final court, the Court of Appeal ruled that it must first look at the evidence to see if there is a common or mutual intention to share in the property. If there is such an intention, the court must determine what is fair having regard to the overall course of dealing between the parties. In other words, what would be a fair share for each party having regard to the whole course of dealing between the parties in relation to the property.

[26] The Court of Appeal found that once a common intention to share is present, then the court should "*attribute to the parties the share which the court considers fair having regard to the whole course of dealings between them in relation to the property.*" This legal principle is known as the fair share approach. The significance of the case is therefore that the court will award shares between the parties based on fairness. The court will also impute intention where evidence is missing. The court will therefore consider other factors, such as direct financial contributions, initial contributions, mortgage payments, renovations and entire course of dealings. Therefore, the significance of **Oxley v Hiscock** (op. cit) is that the court decided that where the title is in the sole name of one of the parties and both parties made financial contributions, and there is no agreement, the court will determine beneficial interests based on what is fair.

[27] **Oxley v Hiscock** (op. cit) is important because when property is in one partner's name only, complexities arise, especially when the parties made unequal financial contributions to buying the property, and there are non-financial contributions involved. The court will therefore apply equitable principles, such as resulting and constructive trust to resolve property ownership, after consideration of fairness, whole course of dealings and agreements between the parties. Whether termed as constructive trust or proprietary estoppel, the outcome is similar, shares are inferred or determined based on what is fair

between the parties, if not agreed to initially. The court is therefore also allowed to impute intention, where evidence is missing. According to Lord Justice Chadwick, there were two questions to ask in the case: (i) whether there was a constructive trust and (ii) how the constructive trust would be quantified. The Court of Appeal held that a fair share distribution should be 60% to Mr. Hiscock and 40% to Mrs. Oxley.

[28] Oxley v Hiscock (op. cit) was later refined in the authority of **Stack v Dowden** (op. cit). Both cases therefore address how courts should determine the beneficial interests of cohabitating couples in cases where: (i) legal title does not clearly reflect the parties' true intentions and (ii) there is no express declaration of trust. In **Stack v Dowden**, (op. cit) the property was bought in both parties' joint names. The parties were unmarried but had children. The defendant, Mrs. Dowden contributed significantly more financially and the parties' finances were kept largely separate. In **Stack v Dowden** (op. cit), it was confirmed by the House of Lords that where there is joint legal ownership of property between the parties, the starting point is that the beneficial ownership follows in the same way. It is for the party asserting that beneficial ownership is different from legal ownership to prove the beneficial ownership. In doing so, the party has to show evidence of the following factors:

- (1) In absence of an agreement, what was the common intention between the parties?
- (2) Common intention can be inferred by conduct between the parties.
- (3) Did the common intention to share jointly at the beginning of the relationship change during the course of the relationship? Based on a joint agreement between the parties to that relationship, that such be changed?
- (4) What is fair between the parties having regard to the parties' whole course of dealing (**Oxley v Hiscock** (op. cit) is authority that whole course of dealing must be given a broad meaning).
- (5) Each case will turn on its own facts.

[29] The legal issue in **Stack v Dowden** was: Where property is in joint names, should the beneficial ownership automatically follow legal title, or can it be rebutted? The decision of the House of Lords is that (i) where property is in joint names, equity follows the law of 50:50 beneficial ownership and (ii) the presumption can be rebutted by clear evidence of a different common intention.

[30] The key principle from **Stack v Dowden** (op. cit) is therefore that, where the property is in joint names, that raises a presumption that the parties in whose joint names, the property is owned, are joint legal and beneficial owners of said property. It is important to consider the whole course of conduct between the parties and other factors. Other factors include financial contributions, mortgage responsibility, arrangement of finances whether joint or separate, children, purpose of the property and the parties' conduct.

[31] Therefore, **Oxley v Hiscock** (op. cit) established flexibility in determining beneficial shares where intention is unclear. While **Stack v Dowden** refined this approach by introducing a presumption, elevating non-financial factors and providing authoritative guidance.

[32] **Jones v Kernott** [2012] 1 AC 776 later consolidated and clarified the approach developed in **Oxley v Hiscock** (op. cit) and **Stack v Dowden** (op. cit), turning what had been developing principles, into a coherent, authoritative framework for determining beneficial interests under a common intention, constructive trust. However, **Stack v Dowden** (op. cit) left two major uncertainties. **Jones v Kernott** (op. cit) clarified the position left unclear in **Stack v Dowden** (op. cit) by addressing the following questions: (i) Could the court impute intention or must it always infer intention from evidence and (ii) Could common intention change over time, after acquisition? **Jones v Kernott** (op. cit) answered both questions directly. The first question, regarding imputed intention, the Court of Appeal answered in the affirmative. The Supreme Court in **Jones v Kernott** (op. cit) confirmed that the court may impute intention and held; "*where it is clear that the parties intended their beneficial interests to change, but there is no evidence of what shares they intended, the court is entitled to impute an intention that is fair in light of the*

parties' dealing.” The answer to this question built directly on **Oxley v Hiscock** (op. cit). The difference with **Stack v Dowden** (op. cit) is that **Stack** emphasized inference first. **Jones v Kernott** (op. cit) therefore confirmed that imputation is legitimate when inference is impossible. The second question the Supreme Court also answered in the affirmative, which is that common intention is not fixed at purchase and may change over time. Common intention may evolve during the relationship and the court may therefore examine post-acquisition conduct, especially after separation. Therefore, the court may infer a change in common intention, even where there was no express discussion between the parties.

[33] In essence, **Jones v Kernott** (op. cit) clarified the position in **Stack v Dowden** (op. cit). **Jones v Kernott** (op. cit) restated the two-stage test in **Stack v Dowden** (op. cit). The first step is to identify common intention, which includes starting with the presumption of equality where it is that the title is in joint names. The court may then look for evidence to infer a different intention. The court must also consider the whole course of dealings. The second step is to quantify shares. If shares can be inferred, apply them. If shares cannot be inferred, impute shares that are fair based on factors, such as financial contributions, responsibility for mortgage and outgoings, outcome of separation and practical reality of ownership. Ultimately, in **Jones v Kernott** (op. cit), the presumption of equality was rebutted and the court inferred that the parties no longer intended equal ownership. Therefore, exact shares could be inferred and were inferred by the court in shares of 90% to Ms Jones and 10% to Mr. Kernott.

[34] **Jones v Kernott** (op. cit) was applied in the Jamaican Supreme Court case of **Vernal Patterson v Millicent Patterson** [2019] JMSC Civ 10 per D Fraser, J. (as he then was) at paragraph 14. In **Vernal Patterson v Millicent Patterson**, D Fraser, J. (as he then was) also referred to **Stack v Dowden** (op. cit) at paragraph 11. The court noted that both parties in the case relied on **Stack v Dowden** (op. cit), which considered the principles to be applied in determining the beneficial ownership held by persons who share property as joint tenants. Baroness Hale, who gave the leading judgment, after reviewing a number of cases, stated at paragraph 56 that:

“Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.”

[35] At paragraph 12 of his judgment, D Fraser, J. (as he then was) continued in reference to Baroness Hale, who further indicated at paragraph 68 of her judgment that:

“The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way...”

[36] At paragraph 16 of **Vernal Patterson v Millicent Patterson** (op. cit), D Fraser, J. (as he then was) referred to a summary of the applicable principles in determining beneficial interests in the circumstances of joint ownership, which are that:

(1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.

(2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change.

(3) Their common intention is to be deduced objectively from their conduct: “the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party’s words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the

other party” (Lord Diplock in Gissing v Gissing [1971] AC 886, 906). Examples of the sort of evidence which might be relevant to drawing such inferences are given in Stack v Dowden at para 69.

(4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, “the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property” : Chadwick LJ in Oxley v Hiscock [2005] Fam 211, para 69. In our judgment, “the whole course of dealing... in relation to the property” should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties’ actual intentions.

(5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).

[37] A recent Supreme Court decision I must mention is **Paulette Brooks-Mullings and anor v Annette Watson Copeland** [2026] JMSC Civ 33. In said decision, Staple J. revisited the equitable principles of constructive trust in circumstances where the legal title to property is in the joint names of the parties, but the claimants contend that the defendant holds the property on trust for the claimants. At paragraph 26 of His Lordship’s judgment, Staple J. summarized the applicable considerations that must be made in relation to constructive trusts, where property is held in the joint names of parties and there is a dispute as to whether beneficial ownership is the same as that on the title. Staple J., having borrowed from the judgments of Baroness Hale and Ld. Walker in **Jones**

v Kernott (op. cit) as well as the Court of Appeal in **Johnson v Johnson** [2023] JMCA Civ 10 stated the considerations in the following terms:

(a) Start with the presumption that equity follows the law and there is joint ownership in law and in equity.

(b) This presumption can be displaced by showing either:

(i) That the parties had a different common intention at the time when they acquired the home; or

(ii) That they later formed the common intention that their respective shares should change.

(c) The common intention is to be deduced objectively from their words and, in the absence of express words or any words at all, their conduct.

(d) The intention is the intention reasonably understood by the other party to be manifested by that other party's words and conduct notwithstanding (emphasis mine) that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party.

(e) The conduct is to be assessed over the entire course of dealing with the property by the parties.

(f) If it is clear that there was either:

(i) No intended joint tenancy at the outset;

(ii) Or that they had changed their original intent, but you cannot ascertain, either by direct evidence or inference, what the actual inference was as to the shares in which they would hold the property, then each owner is entitled to the share that the court considers fair, having regard to the whole course of dealing between them

(g) It is important to note that this fair share may be 100% in favour of one party or the other.

(h) Financial contributions are relevant, but there are many other facts which may enable a court to decide what shares were either intended (if such intention was known or ascertainable) or fair (where the intention is not known or ascertainable).

Whether resulting trust or constructive trust principles should be applied

[38] Based on the considerations discussed in **Paulette Brooks-Mullings and anor v Annette Watson Copeland** (op. cit), the constructive trust is therefore very much appropriate in circumstances where the parties in an intimate relationship acquired property together and one of the parties later seeks to rebut the evidence that both parties are to share beneficially in the same terms of legal ownership of that property. For the purpose of these reasons, I have further addressed this conclusion of mine, immediately below.

[39] My first consideration is that of counsel's oral and skeletal submissions to the court. In learned counsel's submissions, counsel for the claimant placed much emphasis on the resulting trust approach and argued that a resulting trust arose in favour of the claimant in respect of the Fort Charles property and the Toyota Wish Motor car. Learned counsel for the claimant argued that this presumption of resulting trust placed the burden on the defendant to rebut said presumption. As a matter of fact, counsel for the claimant argued that there was insufficient evidence by the defendant to raise the issue of constructive trust in favour of the defendant because the work carried out by him did not give rise to equity in his favour in the circumstances. I must reject this proposition that the correct approach is that of a resulting, as the correct approach in the circumstances is that of a common intention constructive trust.

[40] At common law, a resulting trust arises in a circumstance wherein, if a person contributes to the purchase price of property, then that person is presumed to be a beneficial owner of that property despite the fact that legal title to the property is purchased in another person's name. The title holder is presumed to hold that property on a resulting trust for the person providing the financing, at least to the extent of that person's financial contribution. This raises a rebuttable presumption, which may be rebutted by evidence to the contrary that the person who provided the financing had some other intention. That other intention could be to provide a gift to the title holder. The onus is on the person asserting that the presumption of resulting trust has been rebutted to show by evidence that the property purchased is not held on trust but is a gift. If the court were to adopt and apply the resulting trust approach in these circumstances, there is no doubt that the court would rule in favour of the claimant. This is so because the claimant would have satisfied the burden of showing by evidence that she provided the full purchase money for purchasing the property, and that is all the evidence that is required in a resulting trust.

[41] However, on the other hand, the common intention constructive trust arises as a presumption in favour of the parties' whose names appear on the legal title. The onus is for the party attempting to prove that the beneficial ownership goes in some other direction other than the legal ownership, to prove this contrary beneficial ownership.

[42] The law is clear and one should not be side-tracked or confused by the difference between resulting and constructive trust. The line of authorities following the seminal case of **Stack v Dowden** (op. cit) make it clear that once there is legal title registered in both parties' names, the starting point is joint legal ownership. So, in these circumstances, the onus is first on the claimant to rebut this presumption that the beneficial interest follows the legal interest of joint ownership. One way to prove this contrary evidence is by the presumption of a resulting trust. By a resulting trust, the claimant does not need to prove a common intention existed between her and the defendant. The claimant only has the burden of showing that she provided the purchase money for the transaction, as that is all that is required in a resulting trust.

[43] Contrary to learned counsel's submissions, after the decision in **Stack v Dowden** (op. cit), resulting trusts have a very limited role in domestic cases. The common intention, constructive trust, is the more modern approach to be applied by the court. A resulting trust is to be regarded as a last resort, where no common intention can be found between the parties. A common intention constructive trust is to be applied, as a resulting trust can only survive where the parties are not in a relationship of trust and there is no factual basis for finding a shared intention. In the case of business partnerships, a resulting trust can be presumed to exist but in the case of a cohabiting couple, the common intention, constructive trust, is the more appropriate principle to be applied. The elements of a constructive trust are: (i) existence of a common intention, (ii) detrimental reliance and (iii) unconscionable denial of rights.

[44] In applying these legal principles to the facts of this case, the issues that must be resolved by the court are issues of law and fact. What was the common intention of the parties, when the relevant property was purchased? That is the first question now to be decided by the court. The second question is, did that common intention change at any later stage. If so, what changes were then made to that previously existing, common intention?

Common intention at time of acquisition

[45] In ascertaining common intention, there are two approaches the court can take. If the court were to accept the arguments from learned counsel of the resulting trust approach, there would be no need for the parties to prove a common intention. The resulting trust approach does not require the element of a common intention. All that is required is for the party relying on the presumption of resulting trust is to prove that they provided the financing to acquire the property. **Stack v Dowden** (op. cit) and **Jones v Kernott** (op. cit) are authorities for the view that where the constructive trust approach is adopted, proof of a common intention, at the time of the acquisition of the property is required. This common intention may be inferred, based on the evidence of conduct and

course of dealings between the parties, and where there is absence of express agreement between the parties.

[46] In circumstances where title to the property (Fort Charles or the Toyota Wish Motor car) is in joint names of the parties, there is a presumption that the parties intended to share equally in the legal and beneficial ownership of the property. In this case, the presumption has been raised in favour of both the claimant and the defendant that the parties intended to share equally in ownership of both properties, both legally and beneficially. In respect of the Fort Charles property, this presumption is raised by the conclusive evidence of ownership of the certificate of title to the property, which is registered in the joint names of the claimant and the defendant. The claimant and the defendant are registered on the title as joint tenants. The general principle is that the certificate of title is conclusive evidence of ownership of the person named as owner on the certificate of title. That ownership by certificate of title is indefeasible, and this principle of indefeasibility is confirmed by relevant sections of the **Registration of Titles Act**, namely **section 68**. There are circumstances where this conclusive evidence of ownership can be displaced, and these exceptions are outlined in relevant sections of the **Registration of Titles Act**. One such section is **section 70** of the **Registration of Titles Act**, which outlines fraud as an exception to a certificate of title being conclusive evidence of ownership. In respect of the Toyota Wish Motor car, the presumption of legal and beneficial ownership is also raised in favour of the claimant and the defendant to share equally in said property by virtue of the motor vehicle title being registered in both parties' names.

[47] The affidavit evidence is clear, at the time when the claimant acquired the Fort Charles property, as well as the Toyota Wish Motor car, the claimant demonstrated an intention to add the defendant's name to the titles because the defendant led her to believe they were both in a committed relationship. At the particular times when both assets were acquired, the claimant did not require the defendant to provide any financial contribution to the acquisition of the assets, and it was sufficient at the time that the claimant believed that she and the defendant were in a committed relationship. The certificates of title for the Fort Charles property and for the Toyota Wish Motor car are

therefore, sufficient evidence to infer a common intention between the claimant and the defendant, to share equally in said properties. This common intention existed at the time the claimant purchased the particular properties and placed the defendant's name on said titles, both as joint tenant on the title for the Fort Charles property and as co-owner on the title for the Toyota Wish Motor car. The evidence therefore suggests that the claimant intended for the defendant to benefit by acquiring half share in ownership of these assets, without having had to provide any financial contribution to their acquisition, and based on love and affection, which was based on the fact that the claimant and the defendant were in a committed, monogamous relationship. There is therefore a presumption of ownership in favour of both the claimant and the defendant to share in 50:50 ownership of the relevant property and the Toyota wish motorcar.

[48] Since common intention depends on mutuality of understanding and agreement, where there is no such agreement, the intent will have to depend on a presumption of financial contribution and other relevant factors. There are cases that suggest that a common intention trust can arise based on direct contributions where there is no agreement or arrangement, such as **McFarlane v McFarlane** [1972] NI 59.

Did the common intention change?

[49] Common intention constructive trust authorities confirm that common intention between the parties can change over time. In both the Affidavit in Support of Fixed Date Claim Form filed on March 18, 2022 and Affidavit of Leandy Clarke in Response filed on Nov 24, 2022, both the claimant and defendant admitted that the relationship broke down. However, both parties gave conflicting evidence as to the reason for the breakdown of the relationship. The court, however, accepts the claimant's evidence. At paragraph 11 and 12 of the Affidavit in Support of Fixed Date Claim Form, the claimant stated that:

"11. In about June, 2021, I discovered that the defendant had been deceiving me into believing that he was monogamous with and

singularly devoted to me. I discovered that he had intimate relationships with other women and that during our brief relationship he fathered at least one child. As a result, our relationship ended.”

“12. I requested the defendant to transfer his holding (per the title to the property at Fort Charles and also to transfer title to the car into my name only based on the fact that he had made no contributions towards the acquisition of either and given that our relationship was based on lies and deceit on his part.”

[50] There is also the evidence of Kino Edmond, in which Mr. Edmond admitted to having a conversation with the claimant about the nature of her relationship with the defendant. Mr. Edmond claimed that since the claimant heard that the defendant was cheating on her, she wanted the defendant off of the title to the Fort Charles property and took action to take back the Toyota Wish Motor car. The said Mr. Edmonds’ evidence, in my view, supports the claimant’s version, of the matters which he testified about. Interestingly, though, Mr. Edmond testified as a defence witness. This court accepted Mr. Edmond’s evidence as being truthful.

[51] While there is conflicting evidence from both the claimant and the defendant, the court accepts that there was a breakdown of the relationship as of June 2021, and that thereafter, the intention of the claimant as to who should have ownership of the disputed property and motor vehicle, must have changed. The claimant would, from then, have desired to have exclusive ownership of each of same. However, the defendant has always, this court believes, wanted to maintain his equal ownership of each of same. Thus, the common intention of the parties as to ownership, has never changed. That common intention was always that the parties would have an equal share of the property and the motor vehicle. Their common intention in that regard, existed from the time when their respective names were placed on the titles for each of same, in equal shares. The fact that when the claimant returned to Jamaica in December 2021, she sought to take possession of the Toyota Wish Motor car and requested that the defendant transfer his shares in the Fort Charles property and the said car to her, depict a change in the parties’

common intention. The fact that the claimant no longer wished the defendant to benefit in sharing in ownership of the properties is sufficient evidence to infer that upon breakdown of the relationship, the common intention between the parties must have changed to the effect that the claimant no longer wished for the defendant to benefit in ownership of the properties. At that stage there was no longer any common intention between the relevant parties as to how the relevant property and/or motor car, would be owned. Thus, this court has accepted the relevant common intention as being that which existed between the relevant parties, when the relevant property and/or motor car were acquired.

Whole course of dealings to determine fairness

i) Fort Charles property

[52] The claimant asserted that she provided the entire purchase money for the purchase of the Fort Charles property in the amount of US\$ 207,500.00. The claimant supported her case by providing evidence of the sale agreement which bears her sole signature. The claimant's evidence is that she added the defendant's name to the title because she and the defendant were in an intimate relationship. However, the defendant made no financial contribution towards the acquisition of the property.

[53] The court has already ascertained the claimant's intention for adding the defendant's name to the property title, and it is because the defendant led the claimant to believe that they were in a committed, monogamous relationship and the claimant wanted her partner to benefit from having his name on the title.

[54] The other relevant part of the evidence is that the defendant also relied on representations made by the claimant. The defendant claimed to have made non-financial contributions to the property, by having work done on the property, after acquisition of the property. The defendant claimed that he made arrangements and paid for the replacement of the roof, was involved in pool repairs, painted inside of the house along with his friends and assisted with certification of the premises. However, the defendant's evidence was challenged by the claimant. Even so, the court considers that the work that

the defendant alleges he did on the Fort Charles property was miniscule. However, it is evidence that the defendant relied on a common intention between himself and the claimant to work together in respect of the Fort Charles property. This court has not accepted the defendant's evidence that he paid for the replacement of the roof, or that he was involved in pool repairs. The defendant provided no independent evidence, or documentary evidence in proof of either of those suggested items of work that he was either involved in, or paid for, or both.

ii) Toyota Wish Motor car

[55] The claimant also asserted that she purchased the Toyota Wish Motor car without any financial assistance from the defendant. The claimant, however placed the defendant's name on the title because of insurance purposes, since the defendant was a young driver.

[56] The defendant's evidence, however, is that the claimant purchased the motor car for him, because according to the claimant, it was too dangerous for the defendant to ride a motorbike while carrying a weed whacker.

Burden and standard of proof

[57] The starting point in determining ownership is that where there is joint legal ownership, there is also joint beneficial ownership which follows. The fact that there is conclusive evidence of ownership of both the Fort Charles property and the Toyota Wish Motor car by way of certificate of title registered in both the claimant's and the defendant's names is a rebuttable presumption that the parties are entitled to share equally in the legal and beneficial ownership of the properties. The party who asserts that the beneficial ownership goes in some other direction than the legal ownership has the burden of rebutting that presumption. This presumption may be displaced based on cogent evidence which depicts that the beneficial ownership does not follow the legal ownership.

It therefore follows that the burden of proof lies with the claimant throughout, to displace this presumption of joint legal and beneficial ownership of the Fort Charles property as well as the Toyota Wish motor car. The claimant must satisfy this burden of proof on a balance of probabilities.

[58] Learned counsel for the claimant asks the court to accept that a resulting trust arises in favour of the claimant, and that it is for the defendant to rebut that presumption of resulting trust. The court rejects this submission of learned counsel. Instead, the court must consider the presumption of joint legal ownership between the claimant and the defendant as endorsed on the certificate of titles, and whether the claimant has rebutted that presumption in the defendant's favour to have the defendant's name removed from the title and to have the property registered in the claimant's name solely.

[59] The claimant claimed that the relationship between the claimant and the defendant broke down in June 2021. The reason for the breakdown of the relationship is that the claimant discovered that the defendant lied to her about being in a committed relationship with her. The evidence points to the defendant being in relationships with other women apart from the claimant, and fathering a child with another woman during the course of his relationship with the claimant. The court also accepts the evidence of the claimant, that after the property was registered in the claimant's and the defendant's joint names, the defendant's behaviour towards the claimant changed. After the property was acquired in the claimant's and the defendant's names, the defendant began to spend less time with the claimant. The claimant's evidence is that after finding out about the defendant's infidelity and his child he fathered with another woman, she ended the relationship with the defendant. Further to ending the relationship, the claimant took steps to exclude the defendant from the Fort Charles property and to recover possession of the Toyota Wish Motor car from the defendant.

[60] Ultimately, the court must come to a conclusion regarding the shares in both properties, between the parties, based on equity and fairness. The court accepts that there is a presumption in favour of the defendant in that he possesses half share in the Fort Charles property and the Toyota Wish Motor car because his name is on both

certificates of title. However, that presumption is rebuttable by evidence that the defendant acted contrary to equity or acted unfairly in the circumstances.

Whether equity should avail the defendant

[61] The court must consider a fair and equitable outcome in the circumstances. According to the claimant's case, there is evidence that the defendant deceived her and falsely represented to her that he was genuinely interested in a committed relationship with her. The claimant's case, however is that the defendant was never genuinely interested in a committed relationship with her but was deceitful about his commitment to her. After the defendant benefitted from having his name placed on the title to the Fort Charles property, the defendant's conduct changed and he started to spend less time with the claimant. The claimant also later discovered the defendant fathered a child with someone else during the course of their relationship. After discovering that the defendant was dishonest during the relationship, the claimant took steps to end the relationship. The court's position is that notwithstanding the issue of credibility in hearing evidence from both the claimant and the defendant, the court accepts the claimant to be a witness of truth and rejects the defendant's evidence, which this court concluded, was untruthful. The court accepts the claimant's evidence that she was deceived by the defendant during their relationship. What then is the implication of the defendant's conduct?

[62] The defendant asserted that even though he did not contribute financially to the acquisition of the properties (Fort Charles and Toyota Wish Motor car), he relied on the representations of the claimant, and acted to his detriment based on those representations. Those representations were that the claimant wished to share her assets with the defendant and as a result chose to place his name on the titles to the properties as joint legal and beneficial owner. The defendant also acted to his detriment by investing his time, energy and labour into improving the Fort Charles property because he believed he would become joint owner of the properties.

[63] Equity will not allow a person to benefit from misrepresentations or fraudulent representations. This principle is rooted in the long-standing principle and equitable maxim, “*He who comes to equity must come with clean hands.*” If a person has made false representation, whether fraudulent, negligent or innocent, equity will not assist them in enforcing and benefitting from contractual or property rights that flow from that misrepresentation. Another equitable principle is that, “*Equity will not permit a person to profit from their own wrong.*” In which case, equity can prevent a party from benefitting from legal ownership if there is evidence that his wrongdoing caused him to profit from that ownership.

[64] There are numerous authorities that apply these maxims. In **Redgrave v Hurd** [1881] 20 ChD 1, England’s Court of Appeal, sitting in the Civil Division held that where one person induced another to enter into an agreement with him by a material representation that was untrue, the fact that the false statement induced the contract makes the contract voidable, and the contract may be rescinded on that basis. The key legal principle derived from this authority is that equity will not allow a party who is guilty of deceit or misrepresentation, which induces another party to enter into a contract, to benefit from that contract. See also **Nocton v Norburton** [1914 – 1915] All ER 45, [1914] AC 932.

[65] On the issue of credibility, the court reiterates that it accepts the evidence of the claimant over that of the defendant, the court having seen and observed the parties while they were giving evidence. The claimant’s evidence that the defendant deceived her into believing he was genuinely committed to her and was in a monogamous relationship with her is accepted by the court as the truth. In that case, the common intention between the parties that appeared to have existed at the beginning phase of the relationship when the claimant and the defendant had their joint names placed on the title for the property and on the title for the Toyota Wish motor car was later rescinded when the claimant discovered the real truth about the defendant in forming a relationship with the claimant and later about the defendant’s infidelity. The truth is that the defendant was not genuinely interested in a committed relationship with the claimant. As soon as the claimant acquired the benefit of half ownership in the claimant’s assets, the defendant’s conduct towards

the claimant changed, by spending less time with the claimant. The claimant later discovered further dishonesty from the defendant when she found out about the defendant's child that he fathered while he was supposed to be in a committed relationship with the claimant.

Conclusion

[66] In light of the foregoing, it is this court's conclusion that although otherwise, the equity as per the constructive principle, would be in the defendant's favour, in the particular circumstances of this particular case, the defendant should not benefit from the equity, which would otherwise have been in his favour.

[67] He should not benefit from same, because of his dishonesty to the claimant in enabling himself to have had his name placed on the respective titles for the property and for the Toyota Wish Motor vehicle and also because of what this court has determined, was his dishonesty before this court.

DISPOSITION

[68] My judgment orders are as follows:

- i. The claimant is the sole legal and beneficial owner of all that parcel of land part of Fort Charles in the parish of St. Elizabeth and registered at volume 1244 folio 202.
- ii. The defendant shall transfer to the claimant his one half share and interest in the Fort Charles property within three weeks of the date of this order, failing which the Registrar of the Supreme Court is empowered to effect and conclude the transfer by signing all necessary documents as soon as practicable after the defendant's refusal or failure to do so.

- iii. All transfer tax and stamp duties on said transfer are waived.
- iv. The claimant is the sole legal and beneficial owner of the Toyota Wish Motor car (identification number 07422068).
- v. The defendant shall transfer to the claimant his one half share and interest in the Toyota Wish Motor car within three weeks of the date of this order, failing which the relevant Registrar of the Supreme Court shall be empowered to effect said transfer as soon as practicable, after the defendant's failure or refusal to do so.
- vi. All taxes and/or duties which may otherwise apply in respect of said transfer, are waived.
- vii. The claimant's counsel shall have carriage of transfer of the property referred to in order no. 1 above.
- viii. The costs of this claim are awarded to the claimant and such costs shall be taxed, if not sooner agreed.
- ix. Liberty to apply.
- x. The claimant shall file and serve this order.

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Hon. K. Anderson, J.