



[2025] JMSC Civ 28

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

**CIVIL DIVISION**

**CLAIM NO. SU2022CV03068**

<b>BETWEEN</b>	<b>SCOTT ANTHONY MCKNIGHT</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>GEORGINA SMITH</b>	<b>DEFENDANT</b>

Mr Craig Carter instructed by A McBean & Co attorneys-at-law for the Claimant

Mr Leroy Equiano and Ms Esther Reid Attorneys-at-law for the Defendant

February 17, 2025 and March 10, 2025

***Trial – Division of Property – unmarried couple - constructive trust, proprietary estoppel, interest acquired in property common intention***

**JUSTICE T MOTT TULLOCH-REID**

**BACKGROUND**

1. Mr Scott McKnight has applied to the Court for a declaration that he has acquired a 50% equitable interest in property located at 1403 Marine Time Place, Bogue Village, Montego Bay in the parish of Saint James. The property is registered at Volume 1392 Folio 722. I will refer to it going forward as the “Property”. In addition to the declaration sought, Mr McKnight seeks an order that the Registrar of Titles is to endorse his half interest in the Property on the Certificate of Title.
2. In support of his claim, Mr McKnight relies on his own evidence as contained in his Affidavit in Support of Fixed Date Claim Form filed on October 6, 2022, as well as

his Supplemental Affidavit filed on February 27, 2023. The documents exhibited to his Affidavit and Supplemental Affidavits were all agreed, and all became a part of his evidence.

### **The Claimant's evidence**

3. Mr McKnight agrees that the Defendant, Ms Georgina Chin (she has retaken the use of her maiden name since her divorce some 41/2 years ago) is the sole registered owner of the Property. His evidence is that she resides in the United Kingdom and has lived there ever since he knew her. He met the Defendant in 2012, and they developed an intimate relationship which lasted for about 10 years. In 2013, she purchased the Property, which at the time comprised a 2-bedroom, 1 bathroom, living room and kitchen. When she purchased the house, they both moved in and began living there. She then returned to the United Kingdom but visited from time to time.
4. During their relationship, the Claimant says that the Defendant told him that the house belonged to them both, and they discussed getting married and leading a life together where they would expand the house. They got engaged in 2016 and the Defendant promised him that when they got married, he would be added to the title to the Property. She would do so at the same time when she changed her name. She did not tell the Claimant at any point in time that she was already married.
5. They began expanding the house after their engagement and over the course of time, two bedrooms, one bathroom, a veranda, garage, washroom, another storey to contain a family room, master bedroom, walk in closet, a bathroom, 2 verandas and a balcony were added. The kitchen and the living room were also extended. This he did primarily at his own expense and with his own manual labour. The Defendant would intermittently (every two weeks) send a maximum of 400GBP

from overseas to contribute to the expansion of the house. She did not always have the money. He is the one who also furnished the house out of his funds.

6. Once the expansion of the house was completed, the Defendant sent persons to the Property in September 2022 with instructions to remove furniture from the house, but he turned them away. When he contacted the Defendant about it, he was not met with the affection which he had expected but was informed by the Defendant that the house and the furniture were hers and she could do with them as she pleased. Needless to say, the relationship has broken down and the Claimant is dissatisfied with the current state of affairs as he had on the Defendant's encouragement and promises that the Property belonged to both of them, and that his name would be added to the Title, spent all of his money to expand the house to his detriment.
7. During the time that he was in a relationship with the Defendant, he was always employed as an auto-technician. He also bought and sold motor vehicles. The money which the Defendant sent to him intermittently, was not for the expansion of the house but to do her personal business. The monies he spent on the house was to purchase material, pay labourers and draughtsmen and roofing specialists. He did not receive receipts for those payments, but he was able to find receipts for the purchase of some materials and those were exhibited to his Supplementary Affidavit.
8. The Claimant denies being involved in other intimate relationships while he was involved with the Defendant. He has obtained a valuation report which sets out the value of the Property at \$36M and he has indicated that in total he has spent about JA\$15M of his own money on the Property.

## **Cross-examination of the Claimant**

9. In cross-examination, Mr McKnight said he was able to provide JA\$15M towards the expansion of the Property as he got it from his savings, partner (I suspect partner draw) and a bus he has in the JUTA business. He did not remember if he had mentioned any of those things in his Affidavits, but he was adamant that he had told his lawyer those things. He said his Affidavits were read over to him by his attorneys-at-law, but he did not recall hearing the lawyer reading anything from the documents about JUTA bus. He said he told his lawyer about his savings at JN Bank and recalls hearing his lawyer read that he had savings at JN Bank from his Affidavits. He said he gave his JN Bank statements to his lawyers but when he was invited to peruse his Affidavits, his JN Bank statements were not contained in either Affidavit. He said he did not tell his lawyer about the partner money. When it was suggested to him that he was making up that information about savings, partner and JUTA bus, he was lying, he disagreed. He said he did not tell his lawyer about partner money as he did not know it was necessary he had just told his lawyer about his savings and the buying and selling of cars.
  
10. When it was suggested to him that he did not contribute one cent to the expansion of the house, his response was "LIE! 90% of the money spent on that house was mine."
  
11. He said the expansion of the house started in 2018. The Defendant had bought the first set of material for the expansion. She had bought half tonne of steel and 300 blocks. That could not start the project, so he purchased more steel, cement, gravel etc. When asked if he did tax returns, he said no but that the bank could prove he was earning money. When asked if he provided that proof, he did not answer. So, it was put to him that he was not earning anything in 2018, but he disagreed with the suggestion. It was suggested to him that he made no purchases of material in 2014 but took up receipts that had nothing to do with the house. He denied this and said that all the receipts had something to do with the house. In

2014, the initial expansion began when a washroom and garage were added to the house. When it was put to him that the lumber bought from different business places (Spectrum Systems Limited, Bayside Supersaver and Yellow Block Factory) all on the same day, Mr McKnight's explanation was that at that time they were constructing the roof of the house and one company did not have all the lumber so he had to get quantities from different business places in order to obtain the total needed for the roofing project.

12. Mr McKnight agreed that when he was making purchases in 2021, the Defendant was sending money to him. The money she was sending was to help to pay the construction workers. He said she was going through financial difficulty and had lamented to him that she felt "a way" that he was the one who was doing everything. The Claimant's evidence is that he is of the view that the Defendant spent approximately \$4M of her money on the expansion of the house and that she bought the house for approximately \$8M or \$9M. He does not know for sure, but she had told him in the past. When it was suggested to him that the Defendant sent him more than the equivalent of \$15M he disagreed. When it was suggested that the Defendant had purchased material with her credit card when she was in Jamaica, he said she had only done so on two occasions to purchase lumber and tiles and that she did not have any receipts for anything else. When the Defendant's credit card statements were put to him, he said that she used the card to make purchases for her own personal business. The Claimant agreed he did not challenge the Defendant's credit card transaction statements in his Affidavit, but he disagreed that he only played a supervisory role in the expansion of the house.

### **Evidence for the Defendant**

13. The Defendant, her friend Ms Margarett Hart and her brother Mr Christopher Chin all gave evidence. Ms Hart's evidence was not particularly helpful as she was not able to speak to who paid for the expansion except for what, Ms Chin told her. She

said that she did not know the Claimant to be employed, or self-employed because he was always at the Property no matter the time she visited. She did not however say what were her usual visiting times.

14. I found Mr Chin's evidence to be truthful for the most part. I found him for the most part to be a reliable witness. Although he was the last of the Defendant's witnesses, I will treat with his evidence first.

15. Mr Chin is a teacher by profession. I found him to be a truthful and credible witness who tried to give a balanced assessment of what was transpiring at the time between the parties. His description of what was taking place at the house in 2021, mirrors what the Claimant said in terms of the extent of the extensions. He disagreed that it was not true that the Claimant had told him that it was the Defendant who was setting up the place. I accept this evidence because although the Claimant may have been of the belief that he was the primary person paying for the expansion, it would not have been untrue that the Defendant would have been contributing to it and I can easily see how the Claimant, who at that point in time was in what he thought was a loving relationship with the Defendant, could have made such utterances. It is also not in issue between the parties that the Claimant was living at the Property so whether he saw it for himself or was told is neither here nor there.

16. Mr Chin was however not very helpful with respect to helping the Court in making a determination as to whether the Claimant was unemployed during the course of the expansion or whether the Defendant sent money to him from the United Kingdom to support him. He admitted that he was not a man who liked to get into people's business, so he is not even sure what material was purchased by the Defendant with her credit card. He was with them when they went to the store, but he went about his business and allowed them to do theirs.

### **Evidence of Georgina Chin**

17. Ms Chin agrees that the parties were living together in the Property when she purchased it. Her evidence is that the Property was purchased with her own money without any assistance from the Claimant. He was unemployed and she had to be assisting him financially. She said the Claimant raised the issue of marriage with her on several occasions, but she was never interested as she was legally married at the time. She denies ever telling the Claimant that the Property belonged to both of them. She says the Claimant gave her an engagement ring, which she took but she did not trust his motives. She said that during their relationship the Claimant was unemployed so although they agreed to expand the Property, she would be the one to finance the expansion.

18. Ms Chin's evidence is that she was the only person who contributed to the financing of the expansion of the Property, the Claimant only assisted with design aspects and supervising the work. It was she who purchased the material by sending money to the Claimant and when she was in Jamaica, she made purchases with her credit card.

### **Cross-examination of Georgina Chin**

19. Ms Chin agreed with Mr Carter that during the course of her relationship with the Claimant, he had several motor vehicles including a BMW SUV and a BMW motor car. She was not able to say what the other motor vehicles were but was able to say that when he moved in with her on the Property, the Claimant's motor vehicle was on four blocks and was not being driven on the road. She did not know if he had a Toyota Noah bus, and she was not able to say if she had paid for any of his motor vehicles. She disagreed that the Claimant was able to pay for his motor vehicles from money he earned as a working man. She said she only got one engagement ring from the Claimant but had no recollection of receiving a second one in 2021. She said in cross-examination that she accepted the Claimant's proposal of marriage, but she was not interested in marrying him at the time as

she was married, and the Claimant knew it. She said she was divorced some 4 ½ years ago but when I asked her what year, she was not sure and did not want to guess.

20. When asked if the money that she sent from the United Kingdom was to cover the Claimant's living expenses, she said she did not know how the monies were disbursed but that she sent money practically every week. In order to get some clarification as to what the intended use of the money was that she sent, I asked Ms Chin if when she was sending the money it was her intention that the money be used to pay for the Claimant's living expenses. Her response was "I do not know." It is somewhat surprising to me that she did not know what she was sending the money for.

21. Her evidence is that she paid all the bills associated with the Property. The bills came to her by email and so she paid the light bill, water bill and Flow bills. She did not provide proof that she paid the bills as she was not asked to do so. When asked about sending money practically every week to the Claimant and her JN Statement as exhibited to her Affidavit was put to her, she explained that she did not have a statement for all the years she sent money to Jamaica, as JN was only able to provide her with information up to a particular point in time and not very far back into the past. Her statements covered the period December 19, 2015 to February 14, 2022. While her evidence is that she sent money every week, when her statements were put to her, it became clear that she had not sent any payments in January 2016, for some weeks in February 2016, or for April, July, August 2016 or for the majority of 2017.

22. She was not sure whether she disputed that the extension to the house began in 2018 and said she did not send any money between 2018 and April 2020 because as far as she was aware, no construction was being done during that period. She said that she had challenged the receipts put forward by the Claimant as proof that he bought material for the expansion but was not able to find any paragraph in her



Affidavit in which the challenge was set out. She agreed she did not hire the contractor who worked on the extension. She could not remember if she had at any time informed her lawyers that she had not been engaged to the Claimant.

23. The following was an interchange between Mr Carter and Ms Chin

Carter: "If someone said on your behalf that the Claimant was compensated for watching your house to oversee the building would that be a lie?"

Chin "No. It would not be a lie. He was compensated."

Carter: "And if they said there were receipts to show the compensation that would be true."

Chin "Not sure. All money sent for the house."

Carter: "So he wasn't compensated then?"

Chin: "Why should he be compensated? We were together."

This is but one example of the inconsistencies which are rampant throughout the Defendant's evidence.

24. Ms Chin also said it would be a lie if someone said in court documents relating to this claim that she and the Claimant were never engaged. This is also telling as her evidence in some instances is that she and the Claimant were engaged but in answer to the question put to her in another way, she said that she was never engaged to the Claimant as she did not trust his motives and in any event she was not interested in marrying him as she was still married at the time he proposed to her.

25. Ms Chin was unable to say how many labourers were employed to the project. She said she did not know but she was the one who paid them. She agreed that the Claimant was in charge of everything. She agreed she did not know how much was required to undertake the construction but disagreed that because she did not know the cost of the construction, she was not able to say that she covered the

entire cost. When asked what the reason for the breakdown in their relationship was, the Defendant said that there was no communication between the parties and that the Claimant would do things without asking her and that she would only find out that things were done when she returned to Jamaica. One example was when he went up the second level and by going up the second level more of her money was being spent without her knowing.

### **The Claimant's submissions**

26. Mr Carter, in his submissions, emphasized the fact that the Defendant accepted that the Claimant was in charge of the expansion project, she did not know what she was sending money to the Claimant for, whether it was for the Claimant's upkeep or to finance the project. She did not know how much the project cost even though she was the one who was paying for it. She could not say if the Claimant physically did work on the project. She agreed that she only sent GBP27,000 to the Claimant between 2015 and 2022. Mr Carter said the Defendant was not a credible witness.

27. Mr Carter submitted that the Claimant was entitled to a half share in the Property because of his financial and physical efforts and because of the promise the Defendant had made to him. He relies on the principles of constructive trust and proprietary estoppel to support his point of view. Proprietary estoppel does not arise on his pleadings, but he assured the Court that the remedy/cause of action can still be considered as Morrison J in **Gerald Belnavis v Laverne Belnavis [2013] JMSC Civ 39** made it clear that a court should not be curtailed in fulfilling its mandate because of the heading a party uses when filing his or her claim. I do not find that the **Belnavis case** is on all fours with the case at bar. A cause of action or remedy must be specifically pleaded so that a defendant will know the case he has to meet. When this is not done, it would not be fair to the defendant who will then be called on to meet a case in the middle or, in this case, at the end of the trial. It is for that reason that Civil Procedure Rules 8.9A provides that a

claimant may not rely on factual allegations that were not set out in his pleadings, but which could have been there, unless the Court gives permission. No permission was asked of me and none was given. I do however agree with Mr Carter that whether or not a statute or principle of law was relied on by a party does not prevent the Court from drawing on it in order to come to a just conclusion. In the **Belnavis case** the court considered the case of **Paul Campbell v Diahann Campbell [2000] E 528** wherein a claim was made under the Children (Guardianship and Custody) Act. Brooks J as he then was brought into play the Maintenance Act as he had to take into account the best interest of the child who was the subject of the claim. The Court is always right to consider the applicable law. The case before me is not grounded in statute. Proprietary estoppel is not a law in and of itself but a cause of action or remedy which should be pleaded if the Claimant intended to rely on it in his claim. The law is not pleaded. The law is dealt with in full in submissions. The law is used to ground the claim and establish causes of action and remedies, which must be pleaded. If proprietary estoppel was the basis on which the Claimant intended to ground his claim, this should have been pleaded.

### **The Defendant's submissions**

28. Mr Equiano relied on several cases to set out the Defendant's position. He argued that the Defendant had never intended for the Claimant to benefit from the Property as she purchased it in her sole name albeit when she purchased the Property, she had already been in a relationship with the Claimant. He argued that the Claimant was merely permitted to live in the house as the Defendant's licensee. The Claimant was aware that the Defendant was challenging his alleged contributions, but he has put forward no evidence to prove that he contributed to the expansion from his own funds and not from the monies which the Defendant sent to him through JN Bank. The Defendant has put forward statements of accounts and credit card statements. The Claimant has not proven he was earning an income or had any savings to fund the expansion.

29. Mr Equiano submitted that the Claimant can only succeed on his claim to beneficial entitlement if he produces cogent evidence to satisfy the Court on the balance of probabilities that he is entitled to such interest. He relies on the dicta of Harris JA in the case of **George Mobray v Andrew Joel Williams [2012] JMCA 26** to support his position. He argued that the Claimant has not produced the cogent evidence needed to satisfy itself that the Claimant has acquired an equitable interest in the property and that that equitable interest is being held on his behalf by the Defendant on a constructive trust.

### **Analysis of the evidence and Case Law**

#### **The Evidence and the issue of credibility**

30. Ms Chin was a very reluctant witness. She did not remember many things and as such she was not helpful to the Court or to herself. She was also evasive when simple questions were put to her. She did not remember how things unfolded, or she did not know. She told the Court she has now been divorced for approximately 4½ years. When asked when she got divorce, she did not know and did not want to guess. That is information, which I believe, Ms Chin could have at the very least attempted to provide the Court with.

31. There were inconsistencies in her evidence as highlighted in paragraphs 23 and 24 above. She said in her evidence that the Claimant was a part of the decision to embark on the expansion of the Property but that she would finance it. If she had not intended the Claimant to share in the Property, why was it necessary for him to be a part of that decision making process? Why not just go ahead with the project without consulting him? He pretty much was running the show because she did not know who was employed or what amounts were being spent on what. She seemed to have just been sending money without being connected to the project in any other meaningful way. Based on the evidence as it was presented to me, it

would appear as though the parties discussed the expansion project and then decided together to embark on it.

32. Further, Ms Chin was not a very credible witness. She did not appear to be as truthful as she could be. She said she was not ever engaged to the Claimant because she did not trust his motives and she was already married, but in cross-examination, she said she had accepted his proposal. In fact, there is an agreed picture of her wearing an engagement ring. She did not challenge that picture. If she was not interested in marrying Mr McKnight, why was she wearing his engagement ring?

33. I accept the Claimant's evidence that he contributed to the expansion of the house in a significant way. I found him to be a credible witness. His demeanour in the witness stand lent itself to that conclusion. He was forthright in his answers. He was able to explain how material was acquired and the extent of the Defendant's contribution. It is clear he was instrumental in the expansion of the Property and that the Defendant relied on him in a substantial way to ensure that things went smoothly. I believe that both parties contributed to the expansion of the house. I do not believe that the financial effort was solely the Defendant's. I am of the view, that they both jointly embarked on the project because they were in a committed relationship with each other and the Defendant by relying on the Claimant in the way she did and by accepting his proposal for marriage, gave the Defendant the impression that the house would be for both of their use. It was that promise which gave the Claimant the confidence which led him to feel comfortable enough to expend his financial and physical resources on the expansion efforts.

34. None of the receipts which support the Claimant's case was challenged or challenged successfully in the Defendant's evidence. An attempt was made to do so in cross-examination, but the Claimant was able to give a reasonable explanation with respect to the specific receipts which were brought to his attention. The receipts that were prepared in 2014 were in relation to the

expansion of the house to include the garage and the washroom. The receipt from Spectrum Systems Limited has the Claimant's name on it as the person from whom the funds were received. Unfortunately for Ms Chin, she was unable to provide the Court with JN Statements to substantiate her claim that the sums were paid using monies she sent to Jamaica in 2014. The Court must rely on the evidence before it and in circumstances where the Defendant is not seen by this Court as a credible witness, the receipts as agreed, will be accepted in proof of the Claimant's case. A reasonable explanation for why lumber was purchased from different business entities was proffered to the Court and is accepted.

35. The Defendant's attorney-at-law has submitted that the sums that were sent to the Claimant were meant for the purchase of the material. There are several receipts in the agreed bundle which do not coincide with or are near to the dates which the Defendant sent money to the Claimant through JN Bank. It is clear from the statements that monies were not sent every week. The total on the statements of monies sent to the Claimant by the Defendant amount to GBP28,190 which using today's rate (which is different from and more than the exchange rate over the period in question) amounts to approximately J\$5.6M. The Claimant says he expended in excess of \$15M of his own money in doing the construction. The receipts put forward do not add up to that amount (some of them were illegible and offered the Court no assistance). The Defendant is not able to say definitively how much money she expended.

36. Mr Equiano submitted on behalf of the Defendant that the Defendant purchased the Property after she began her relationship with the Claimant. If she wanted him to own the Property with her, she would have included him in the purchase. I am not convinced by this argument. The parties were not long together when the Property were purchased. They were not living together. It is after the parties began living together and had been doing so for about a year, that contemplation was had for the extension of the house. Any argument of mistrust for the Claimant on the Defendant's part cannot be sustained as the Defendant had him living in

her house from 2013 until 2022 without issue, she had him overseeing the construction of the Property. He was responsible for paying workmen and buying material, she was sending money to him, yet she did not trust his motives. Those are not the actions of someone who does not trust the motives of her partner.

37. I am surprised that no objection was taken by the Defendant to some of the receipts which were not made out to the Claimant and others which were not legible. Instead, all the receipts were agreed, and no evidence was brought by the Defendant to challenge the content of those hearsay documents. They will therefore be taken as payments made by the Claimant for material purchased by him from his own resources to fund the expansion of the house. This is especially so given he was able to offer an explanation, which on the balance of probabilities, lies in his favour as to what the material was used to construct (washroom and garage in the first instance and the acquisition of lumber for the roof in the next).

38. The copy credit card statements produced by the Defendant show that she too contributed to the purchasing of material and other things for the Property. They do not disprove the Claimant's allegations that he paid for things. In fact, it is my view that they support the Claimant's case as he has never denied that the Defendant has contributed to the building of the extension. When Mr Equiano suggested to the Claimant in cross-examination that it was the Defendant who purchased the material when she was in Jamaica, the Claimant's response was

*"She did it two times, to purchase tile and lumber (2 x 4). She has no more receipt for nothing."*

I am not certain as to what the purchases on the credit card statements produced by the Defendant were but it is clear that she made purchases at Discount Lumber/Hardware in Montego Bay in 2017, 2019 and 2020. There were other purchases from Rapid Tru Valu, Builders Hardware and Yellow Hardware (which the Claimant also purchased from at different times than the Defendant). It means

therefore that the number of purchases made by the Defendant was not limited to two as the Claimant has stated.

39. The Defendant also gave evidence that she was in Jamaica for 6 weeks in the summer and two to three weeks in the winter during the time the extension was being done. Unfortunately, there is no evidence as to when exactly she was in Jamaica during the summer and winter so that these could be juxtaposed against purchases made by the Claimant when the Defendant was in the island. Also missing from the evidence is proof that the Claimant was employed. He said he worked as an auto technician but there was no proof of that from an employer or from any person who would have engaged his services. This is also true in relation to his evidence concerning the buying and selling of motor vehicles. However, the Defendant agreed that the Claimant had several cars over time. She could not say that she purchased them and the conclusion, I suspect Mr Carter wishes the Court to draw is that the Claimant must have been earning a living if he was able to afford his several motor vehicles during his relationship with the Defendant.

#### **The case law**

40. Where in an informal family relationship, one person contributes towards the acquisition and/or improvement of the property, a constructive trust may arise in favour of the contributor. The case law is clear on the position. In the Barbadian case of **Forde v Forde (1991 HC Barbados, No 283 of 1986 (unreported))** in which a defendant contributed towards the conversion of a chattel house into a well-constructed house, he was held to have acquired a beneficial interest in the property and the claimants were holding on constructive trust for him to the extent of his contribution.

41. The same principle of law exists in this jurisdiction and the case of **Azan v Azan (1985) 25 JLR 301** as referred to by Mr Equiano in his submissions is instructive. In that case the Court found that a constructive trust will arise if the claimant can show that there was a common intention that the legal owner and the person



claiming a beneficial interest were to own the property together and as a result of relying on that common intention, the claimant acted to his detriment. There need not be express words to prove the common intention, the conduct of the parties is also sufficient evidence.

42. In the case of **Hack v Rahieman (1977) 27 WIR 109** a man and woman lived together as husband and wife under a Muslim marriage for approximately 28 years. The house was purchased in the husband's name, and he paid the mortgage. The wife was responsible for the household expenses which she paid for out of the profits of her business. There was no evidence that the husband had intended for the wife to have a share in the property and there was no express agreement between the parties to that end. Nonetheless, the Court of Appeal in Guyana took the view that when the husband had been accepting the wife's contributions to the household expenses, it could be inferred that there was a common intention on the part of the parties that the wife should have a beneficial interest in the house. That beneficial interest was assessed as amounting to a 1/3 share.

43. The case of **Hack** differs from the case at bar in that there was no intention on the part of husband to share the house with his wife. In addition, the parties were husband wife. In the case at bar, the parties were not married and did not appear to be in a common law relationship. I do however believe, based on the evidence, that the Defendant had led the Claimant to believe that he would have a share in the Property. In any event, even if this was not so, I am guided by the decision in **Hack** in forming the view that when the Defendant accepted the Claimant's contribution in cash and kind it can be inferred that there was a common intention between the parties that the Claimant was to have a beneficial interest in the Property.

44. In **Gissing v Gissing [1970] 2 All ER 780** Lord Denning made it clear that a trust is created when a trustee conducts himself in such a way that it would be unjust to allow him to deny the *cestui que trust* a beneficial interest in the land acquired.

The trustee will be held to have, by his conduct and words, induced the *cestui que trust* to act to his detriment, reasonably believing that he was to acquire a beneficial interest in the property. To hold that the owner on title is the only owner in circumstances where someone else contributed substantially to the extension of the house, would be unjust and equity must step in, in these circumstances. The doctrine of implied, resulting and constructive trust does not apply only to a husband and wife or common law relationship, but it applies also to persons living together who have decided together to set up their homes and live together in much the same way spouses do. They have decided to live together and in living together, they have decided to expand the house together, they have decided together on what the expansion should entail, and they have both contributed to the financing of the expansion and all the other aspects that would ensure that the expansion is completed. These actions suggest to me that there was a common intention that the Claimant should have a beneficial interest in the Property. If a party in an informal relationship is not able to establish an express declaration that the property is to be held by the persons in the relationship jointly or prove that he contributed to part of the purchase price or paid household expenses so that the other person could contribute to the mortgage payments, then a claim for a trust will fail (see **Burns v Burns [1984] 1 All ER 244**).

45. Being of the view that the Claimant is entitled to a beneficial share in the Property, the next step is to determine what that share is. In **Austin v Austin (1978) 31 WIR 46** Worrel J said:

*“The evidence discloses that each party made a substantial contribution, and in the absence of any evidence to quantify their shares I would adopt the principle stated by Sir Raymond Evershed MR in Rimmer v Rimmer [1952] 2 All ER 863, 867 as a guide in determining their respective beneficial interests. The principle is stated thus:*

*'Where the court is satisfied that both the parties have a substantial beneficial interest and it is not fairly possible to assume some more precise calculation of their shares, I think that equality necessarily follows'.*

## **Conclusion**

46. I am of the view that both parties have an interest in the Property. The Defendant however had already acquired the house before the parties began living together and did so on her own. The Claimant agrees to that. I find on a balance of probabilities that the Claimant contributed to the improvement of the house and is to take a portion of it. Given the fact that both he and the Defendant contributed to the improvement of the house, and that it was the Defendant who acquired the house, I am of the view that he is not entitled to a 50% share in the Property. His ownership is limited to 25% and the Defendant's share is limited to 75%. My orders are as follows:

- a. The Claimant has an equitable 25% interest in property located at 1403 Marine Time Place, Bogue Village, Montego Bay in the parish of Saint James registered at Volume 1392 Folio 722 of the Register Book of Titles (the "Property").
- b. The Claimant's attorneys-at-law are to prepare an Instrument of Transfer to effect the transfer of the 25% share in the Property from the Defendant to the Claimant, and the said Instrument of Transfer is to be lodged at the office of the Registrar of Titles within 90 days of the date hereof.
- c. Should the Defendant fail to execute the Instrument of Transfer, the Registrar of the Supreme Court is to execute the said document on her behalf to facilitate the transfer within the time stipulated by this Court.
- d. Upon the Instrument of Transfer being lodged at the Office of the Registrar of Titles, the Registrar of Titles is to endorse the Claimant's 25% interest in the Property in the Register Book of Titles.

- e. The Defendant is to pay 25% of the Claimant's costs in the claim which are to be taxed if not agreed.
- f. Liberty to apply.
- g. The Claimant's attorneys-at-law are to file and serve the Judgment.