



[2022] JMSC Civ 166

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2019CV02990

BETWEEN	JERMAINE MCLEAN	CLAIMANT
AND	ROSA LAWRENCE	DEFENDANT

IN CHAMBERS

Ms. Dennese Smith for the claimant.

Ms. Tabia Hawkins instructed by Everton Dewar & Co for the defendant.

HEARD: December 2, 2020, February 18, 2021 and September 23, 2022

DIVISION OF PROPERTY- UNMARRIED COUPLE- JOINT TENANCY- CONSTRUCTIVE TRUST- COMMON INTENTION- WHETHER BENEFICIAL INTEREST PARALLEL TO THE LEGAL INTEREST- WHO HAS FIRST OPTION TO PURCHASE FAMILY HOME- ENTITLEMENT TO RENTAL INCOME- INTENTION AS TO PARTIES' INTEREST IN TRUCK- WHETHER DEFENDANT ENTITLED TO RECOVER ITEMS LEFT IN FAMILY HOME

HENRY-MCKENZIE, J

INTRODUCTION & BACKGROUND

[1] This matter pertains the division of property registered at Volume 1109 Folio 230 of the Register Book of Titles, described as Lot # 1252 Bridgeport, St. Catherine, with civic address at 40 Lanark Avenue, which is indicated in the Certificate of Title to be jointly owned by the parties as joint tenants. The claimant claims that the beneficial interest of the parties is as seen on the face of the title, whilst the

defendant in her counterclaim, asserts that she is entitled to a greater beneficial interest in the property.

[2] By an Amended Fixed Date Claim Form filed on October 9, 2020 the claimant is seeking the following orders:

- i. 50-50 share of the house located at Lot 40 Lanark Avenue, Bridgeport P.O. in the parish of St. Catherine
- ii. The claimant be allowed to purchase the defendant's interest in the property
- iii. The property be valued at the date of separation.
- iv. The defendant has no interest in the truck currently owned and operated by the claimant.

[3] The defendant, on the other hand, has asked the court to declare that she is entitled to 80% interest in the subject property and the claimant 20%. She also seeks an order to be given first option to purchase the claimant's share of the property. Also, for the rental income to be shared 80/20 percent in her favour and for recovery of certain personal items namely: water tank, glass tv stand, washing machine and stove. Further, that she be declared the owner of a motor truck registration No. CJ4735, amongst several other orders.

THE EVIDENCE

The Dynamics of the Parties' Relationship

[4] The claimant Jermaine McLean and the defendant Rosa Lawrence met in 2003. At this time, the claimant was a soldier at the Jamaica Defence Force (JDF) living with his wife at a Greater Portmore residence and the defendant a secretary at the Court of Appeal. The claimant has now separated from his wife.

[5] The parties started an intimate relationship in 2004 which was on and off for three years. In 2007 however, the defendant said the claimant invited her to live with him at the Greater Portmore address, which she did before they relocated to the disputed property. The claimant denies that the defendant ever lived at the Greater Portmore address, but said instead that they were then in a visiting relationship. He said that the defendant started visiting and staying overnight at the Greater Portmore residence in 2007 after his wife moved out of the house. He further stated that they did not move in together until after the purchase of the disputed property.

[6] Their union produced one child born on August 16, 2010.

[7] The dynamics of the parties' relationship has been described by the parties as follows:

- The defendant described the relationship as one with constant disputes and abuse over the years. She stated that the claimant was abusive both physically and mentally throughout the relationship to the extent of her having to seek medical attention after some incidents of abuse, some of which she had set out in giving her evidence. She made several reports to the police regarding the abuse. The claimant denied every allegation of abuse of the defendant. He stated that they had periodic arguments but it was the defendant who was verbally abusive.
- The parties maintained a joint account to which they both had unfettered access. It is not disputed that the claimant added the defendant to this account in December 2009 and that all the claimant's earnings including his salary from the JDF were deposited to this account. The claimant in his evidence said that the defendant having access to the account, she was able to and did use the funds in the account at her pleasure. The defendant confirmed this in cross-examination and stated that from 2009 she had access to the account and to the date of trial they both still had access to the joint account. She also indicated that she withdrew and utilized the funds in the account at her will.

- In cross- examination, the defendant also admitted that the claimant also had access to her personal account and would use her account from time to time.
- The claimant alleged that in their relationship he was the breadwinner. However, in cross- examination, he accepted that while he was unemployed for the two years after leaving the JDF in March 2010, the defendant was the breadwinner, he having taken on the task of caring for their daughter who was a baby at the time. The defendant's evidence is contrary to this, in that she said she was the main provider at all times for the family. She described the claimant as wanting to be a kept man. However, in cross- examination, it was her evidence that all the contributions to the household while the parties lived together, was jointly done. This was also accepted by the claimant.

The Acquisition of the House

[8] The subject property is registered in the names of Jermaine McLean and Rosa Lawrence as joint tenants. In 2008, the parties after being together for a couple of years, decided to jointly purchase the house at 40 Lanark Avenue which was being sold for \$6,000,000. It is not in dispute that the purchase was financed by way of a joint mortgage. The defendant obtained a loan from the National Housing Trust and Jamaica National Building Society in the sum of \$3,675,000 and the claimant obtained a loan from the Jamaica National Building Society in the sum of \$2,025,000.

[9] It is also not disputed that the defendant paid \$600,000 deposit on the property. The defendant has indicated that she also paid the cost for the surveyor's and valuation reports. However, the claimant's position is that this was financed by way of the joint account. The claimant also indicated that he incurred additional costs such as the payment of the closing costs and the costs associated with the

correction of a breach of covenant and the payment to the vendor's attorney. He claimed he had used the sale proceeds from his Greater Portmore residence to assist with this purchase. The claimant offered no documentary proof of these assertions, but instead provided an explanation that the defendant had taken all related paper work when she left the house, which the defendant denied. She asserted that the claimant had no savings when the subject property was being purchased and that the Greater Portmore residence was sold after the completion of the purchase of the subject property, therefore the claimant could not have contributed to the purchase, except for the loan. She further stated that the correction of the breach was financed through an additional \$150,000 loan on her NHT account and the vendor's cost was shared. She provided no documentary proof of this additional loan. In addition to this, she said that the claimant throughout the sale transaction was away on training and as such, she was the person to conduct the transaction. This the claimant admitted.

- [10] The parties lived together at the property since the completion of its purchase in December 2008 until April/May 2018 when the defendant moved out after the relationship came to an end.

Post-Acquisition of the House

- [11] After the completion of the purchase of the house, both parties started their repayment of the mortgage. The claimant indicated that the monthly payments which were revised periodically, was initially \$28,000 for the defendant and \$32,000 for himself. However, after he left his position at the JDF, during the two years of unemployment, he was at times unable to make the regular mortgage payments, which eventually caused the mortgage to go into arrears.
- [12] The defendant explained that due to the claimant's irregular payments, the property went into foreclosure on at least three occasions. She was able to put a

stop to this on these occasions by either applying her prepayment to the claimant's mortgage, restructuring the mortgage or borrowing from friends and family.

- [13]** The defendant asserted that she had to borrow \$275,000 from a family friend to clear the claimant's arrears and to fund the household. She also used some of the money from an unsecured loan of \$450,000 from RBC Bank as well as \$200,000 of her redundancy payment from Sagicor Bank in 2016, to clear some of the arrears. Again no documentary proof was given of this.
- [14]** She also alleged that the claimant had to get a loan and also borrow money from his brother in 2011 in the sum of \$250,000 to clear some of the arrears. Further, she said that the claimant used his first gratuity payment from the JDF, to repay his brother and used the balance to back up the household. The second instalment of the gratuity, she said, was also used to repay the loan and to repay a former co-worker who funded the couples' trip to Canada.
- [15]** The claimant denied these assertions. He stated that there was no loan from his brother or from any former co-worker, but admitted his brother assisted with the mortgage payments in arrears. The claimant also denied being aware of any restructuring exercise being facilitated by the NHT or any prepayments being transferred by the defendant from her mortgage to the claimant's, to offset the claimant's arrears.
- [16]** The claimant also stated that when the defendant vacated the property in April/May 2018, she made no further contributions to the mortgage. The claimant indicated that since then all the mortgage payments have fallen on him, including any arrears and penalties. He also alleged that up to June 2018 he had to rescue the home from foreclosure by paying \$421,547.93
- [17]** The claimant in cross- examination, said that both parties had been paying the property tax. However, from 2018 to 2020, the tax was paid by him. He exhibited receipts as proof of his payment for this period. He explained further that though the receipts are in the name of the defendant, the payments were made by him at

the Tax Office at Portmore Pines. The defendant did not dispute the claimant's payment of the property tax, but she indicated that after her redundancy from Sagicor Bank, she used a portion of the redundancy money in the sum of \$45,000 to clear three years' arrears of property tax.

[18] In relation to the renovation carried out at the property, the defendant's evidence is that she had solely paid for the repairs, paint, fixtures for the house in the sum of about \$200,000. She also indicated in her evidence in chief that other works were done on the house such as: treating the entire house for termites, rebuilding and tiling the kitchen counter, repairing the kitchen cupboards, purchasing of a new sink, pipe and fittings, purchasing a new French window and changing the design of kitchen. This she said was done solely by her from the unsecured loan and was repaid from her personal salary account. She said that the claimant's only contribution was towards the transportation of items from Rapid True Value to the house with her truck.

[19] The claimant admitted that work was carried out on the property. However, he outrightly denied that this work was done solely by the defendant. He asserted that the repairs and termite treatment were done jointly and funded by the joint account into which the salary from the operation of the truck was placed. Additionally, he stated that to his recollection, the repairs and termite treatment amounted to approximately \$250,000 and not \$450,000 as alleged by the defendant.

[20] In relation to the rental of the property after the defendant left, the claimant indicated that in January 2019 he begun renting the property to assist with the mortgage payments. The defendant's evidence however, is that the renting of the property began in December 2018. The claimant said he initially rented the property for about six to seven months for \$30,000 per month. Thereafter, it was adjusted to \$27,000 per month in September 2020 for the new tenant who was still in occupation up to the date of the trial. The defendant indicated that she has not benefitted at all from the proceeds of the rent.

The Truck and the Haulage Business

- [21]** After the claimant's two years of unemployment, he went into the truck haulage industry in 2012. The source of funds to purchase the 1st truck and how the haulage contract was secured are of great contention in this matter.
- [22]** The defendant outlined in her evidence in chief that she became interested in the haulage business after having discussions with one of her clients at the Sagicor Bank who was in the business of transporting goods. After the discussion she realized that it would be a good business venture, especially with the claimant's history of driving trucks for the JDF. She went ahead and discussed this with the claimant who himself became interested in the business opportunity and he agreed to it. Thereafter, she did her own research on operating the business and the possible expenses and profit margins to be expected therefrom. It was after being satisfied in her research that she said both herself and the claimant went to look at trucks to start the business. They found a truck which was purchased for \$1,500,000.
- [23]** The defendant said she gave the claimant \$900,000 from the sale of her car to make a deposit on the truck and the remaining \$600,000 was to be paid in three instalments of \$300,000, \$150,000 and another \$150,000. She paid the 1st instalment and the claimant paid the 2nd and 3rd instalments. She also indicated that she borrowed \$100,000 from "loan sharks" to register, insure and license the truck, as well as money to purchase gas for the first few weeks.
- [24]** The defendant's evidence further is that the business had a slow start. It took a few weeks before they were able to land their first contract, which the defendant said she secured at Jamaica Beverages. She said a lot of issues came up with the truck that required repairs and as such all the money earned was pumped into dealing with this and servicing the First Heritage loan. She indicated also that it was a struggle to pay the general household bills on time and that there were occasions she had to forgo making payment to keep the truck operational. She

even employed a close family friend who agreed to work without pay for a few months and to live with the parties in the meantime to assist with the start up.

- [25]** Over the next three years, the defendant said she cleared off the unsecured loan taken from Sagicor Bank. By May 2016 after receiving her redundancy payment from Sagicor Bank, she used a portion of this money to purchase a new truck for \$950,000 (which was registered solely in her name) and also do some repairs to the 1st truck amounting to the sum of \$250,000. The defendant again failed to produce any receipts to show that the money was used towards this repair. In the same year she added the new truck to the contract with Grace Kennedy Limited (formerly Jamaica Beverages).
- [26]** The proceeds from this truck were to be solely for the defendant's use, while that from the 1st truck were to be used to maintain both mortgages and bills.
- [27]** By late November she said the claimant parked the first truck due to Grace Kennedy being dissatisfied with the damaged appearance of the truck and issues with the transmission. The claimant then begun driving the 2nd truck but stopped two weeks after as it was not profitable, it being smaller than the 1st truck. She gave evidence that the claimant at this point encouraged her to sell the 2nd truck which she did and used the proceeds of the sale to repair the 1st truck. The second truck was sold for \$900,000, but the defendant did not provide any evidence what portion of this figure was put towards the cost of repairing the 1st truck.
- [28]** The claimant denied much of what the defendant said. His version of how the funds were sourced for the purchasing of the truck is diametrically opposed to that set out by the defendant. The claimant's evidence is that he had originally planned to enter this business with his gratuity of approximately \$1,000,000 from JDF as it was in line with his job as a truck driver at the JDF. This plan was, however, delayed as he loaned \$900,000 to the defendant to repurchase and repair her motor vehicle after it was damaged in an accident, upon the agreement that she would repay him after the insurance was settled and the car was resold. The claimant said the money was repaid and used by him as a down payment on his

truck. The balance he said, was paid in two instalments. The first instalment came from proceeds earned from the truck and the second and final instalment from the loan from First Heritage in the sum of \$375,000. The claimant indicated that all these monies paid towards the purchase of the truck was funded solely by him without any contribution from the defendant. He stated also that the monies alleged by the defendant to be borrowed from “loan sharks” did not go towards the operation of the truck and the alleged unsecured loan if taken, would be for her personal use.

[29] As to the claimant’s version of how the haulage contract was secured, his evidence is that he did this on his own. He explained that his job in the transport unit of the JDF exposed him to persons in the trucking business and as such, he used these contacts to assist him in entering the business.

[30] The claimant further testified that the truck was operational and in excellent condition and was not in need of repairs. He also denied that the proceeds from the trucking business was not sufficient to cover the household expenses and the loan from First Heritage. He stated that in fact it was because the returns from the 1st truck was so good that the defendant wanted to purchase another truck.

[31] It is not being contested by the claimant that the 2nd smaller truck was solely purchased by the defendant during the parties’ relationship, with no contribution from him. He indicated however, that he was the one who added the 2nd truck to the contract with Grace Kennedy.

[32] He indicated that the money made from both trucks was lodged to the joint account. However, the defendant was able to distinguish the money earned by her truck and would remove it from the account.

[33] The defendant in cross- examination denied that the claimant loaned her this \$900,000. She indicated that the money from JDF was depleted within five to six months and there was no evidence on the account of a transfer of \$900,000 being made to the insurance company. She maintained that the truck belongs to her.

However, she accepted that the title to the truck was not in her name, but explained that this was done to avoid any issues of a conflict of interest arising, considering she was communicating with customers of the bank to obtain a haulage contract.

Other Personal Items

[34] The defendant's evidence is that when she was moving in with the claimant at the Greater Portmore residence, the only item of furniture was a bed. She used her personal savings to purchase furniture and appliances to put in the house when they moved to the subject property. The claimant denied this and has contended that the furniture and appliances were bought by both parties from the joint account at Sagicor Bank. The defendant has refuted this.

[35] The defendant is now seeking to recover some items she said she left behind, namely a water tank, a glass tv stand, washing machine and stove, all of which she said she had purchased. The claimant indicated that he has requested the defendant to remove the washing machine and the stove, but as for the tank and tv stand, they are presently in use by him and the tank was jointly purchased.

ANALYSIS OF EVIDENCE

[36] There were instances in the trial where I believe that both parties were less than forthright in giving their testimonies. Despite this, I have found the evidence of the claimant to more reliable and consistent than the defendant's evidence and is preferred over that of the defendant. This is not to say that I do not accept parts of the defendant's evidence as being true. There were times however, I find, that the defendant was less than sincere and tried to embellish her account in trying to impress the court that she singlehandedly took on almost all of the economic costs of the ventures the parties embarked on during their union, with little or no assistance from the claimant. It is particularly difficult for the court to accept that when there were the usual household bills to pay, a child to maintain, a mortgage to be serviced, a house and vehicles to be maintained, that the defendant would

have been able to afford to undertake all these ventures by herself, with minor assistance from the claimant.

[37] The claimant's evidence is not without fault however, as it lacks documentary proof. However, I also had the opportunity of assessing the parties' demeanour as they gave evidence and I find on a balance of probabilities that the claimant's version of events is more credible.

THE ISSUES

[38] The issues for the court's consideration are:

- i. Where does the parties' beneficial interest lie in the house?
- ii. Which party should have the first option to purchase the interest of the other?
- iii. Is the claimant entitled to any rental income?
- iv. What interests if any are the respective parties entitled to in truck?
- v. Can the defendant recover the personal items left at the house?

THE LAW

[39] When dealing with registered land there is a presumption that the legal interest is parallel to the beneficial interest. This principle is expressed in the maxim equity follows the law. Therefore, where there is joint legal ownership such as is in the instant case, the presumption is that there is joint beneficial ownership. This was discussed in the case of ***Stack v Dowden*** (2007) UKHL 17, at paragraph 56 of the judgement of Baroness Hale of Richmond where she expressed as follows:

“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.”

[40] It is clear based on the foregoing, that the presumption that the shares are divided between the joint beneficial owners equally, can be rebutted by evidence to the contrary. The onus is therefore on the joint owner, in this case the defendant, to show that the beneficial interest is divided other than equally.

[41] It must be noted that the burden of rebutting this presumption is a heavy one that ought not to be embarked on lightly. The court itself is generally hesitant to displace this presumption unless the facts are very unusual. This was emphasised at paragraph 68 of ***Stack v Dowden*** where the learned judge stated 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. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual. Nor may disputes be confined to the parties themselves. People with an interest in the deceased's estate may well wish to assert that he had a beneficial tenancy in common. It cannot be the case that all the hundreds of thousands, if not millions, of transfers into joint names using the old forms are vulnerable to challenge in the courts simply because it is likely that the owners contributed unequally to their purchase”.

[42] This issue was again revisited by the United Kingdom Supreme Court in ***Jones v Kernott*** [2012] 1 AC 776 where the Court gave further guidance on the weight of this burden in the context of joint ownership. Lord Walker and Lady Hale in their joint judgment stated at paragraph 19:

“The presumption of a beneficial joint tenancy is not based on a mantra as to “equity following the law” (though many non-lawyers would find it hard to understand the notion that equity might do anything else). There are two much more substantial reasons (which overlap) why a challenge to the presumption of beneficial joint tenancy is not to be lightly embarked on. The first is implicit in the nature of the enterprise. If a couple in an intimate relationship (whether married or unmarried) decide to buy a house or flat in which to live together, almost always with the help of a mortgage for which they are jointly and severally liable, that is on the face of things a strong indication of emotional and economic commitment to a joint enterprise. That is so even if the parties, for whatever reason, fail to make that clear by any overt declaration or agreement. The court has often drawn attention to this. Jacob LJ did so in his dissenting judgment in this case: [2010] EWCA Civ 578, [2010] 1 WLR 2401, para 90”.

- [43] In order to determine whether this presumption has been rebutted, it is important to explore the law of constructive trust to determine the common intention of the parties at the time of the purchase. It is their conduct at the time of purchase that will assist in determining what the parties intended concerning their respective beneficial interests, or their conduct afterwards, if they later formed the common intention that their respective shares would change.
- [44] In *Hillierie Davis v Walsworth George Thomas* [2016] JMSC Civ 174 the court indicated that this common intention can be proved by bringing direct evidence or maybe inferred from the conduct of the parties. However, this conduct must be referable to the acquisition of the property whether directly or indirectly. Lord Bridge of Harwick in the case *Lloyds Bank plc v Rosset and another* [1990] 1 All E.R. 1111, indicated that contribution to the purchase price whether to the initial deposit or legal fees or even the amortization of the mortgage are conducts from which the necessary inference can be drawn of a common intention. He, however, expressed doubt of the sufficiency of anything less establishing the creation of a constructive trust.
- [45] Lord Bridge’s approach was disapproved in *Stack v Dowden*. Lord Walker of Gestingthorpe explained that the law has moved on since then and the new approach is as outlined by Lord Harwich and Baroness Hale, that is, to discover

“the parties shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it”.

[46] Baroness Hale had also set out at paragraph 69 a wide range of factors that could be considered to determine the parties’ intentions where the property is held by them as joint tenants. She stated:

“Many more factors than financial contributions may be relevant to divining the parties’ true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties’ relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home.

The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties’ individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.

This is not, of course, an exhaustive list. There may also be reason to conclude that, whatever the parties’ intentions at the outset, these have now changed. An example might be where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is significantly different from what they had then.”

DISCUSSION

House at 40 Lanark Avenue

[47] In this case, there was no explicit expression by either party as to how they intended their beneficial interest in the property to be divided. The defendant is contending that the shares should be divided other than equally. She has the onus of bringing evidence to support this contention. The court therefore has to examine the evidence to find out what was the common intention of the parties at the time of the acquisition of the property and to see whether the parties had later formed the common intention that their respective shares had changed. The court will also examine the parties' course of dealings in the property throughout their time of cohabitation, in order to deduce what their intentions were.

[48] I bear in mind in making my assessment of the facts, the submissions filed on behalf of both parties, which I will not repeat. The parties can rest assured that I have given due consideration to these submissions.

[49] The starting point in relation to interest of the claimant and the defendant as joint tenants would be 50% each. The defendant has sought to rely on the following as evidence of the change of that position:

- Greater contribution to the purchase of the property
- Payment of her monthly mortgage as well as the claimant's mortgage on occasions
- Renovation of the house
- Purchase of furniture and appliances for the home
- Payment of the household expenses including property tax

[50] However, bearing in mind the authorities on this issue, the question is whether the evidence presented by the defendant is sufficient to displace the presumption of the equal beneficial interest each party holds in the property. The evidence points to the fact that the defendant undertook more in relation to the purchase of the property and the running of the household for the most part, but the claimant I find, also made his contributions to both the purchase of the property and the running of the household which was not insignificant and in keeping with what he could afford.

[51] The undisputed evidence before the court is that from as far back as when discussions were had between the parties to purchase a property, this venture was decided to be done jointly by both of them. The actual process of the acquisition primarily seems to have been managed by the defendant as the claimant was away on training as a soldier in the JDF. However, despite his absence, he was still a part of the process and did his part in ensuring that he was able to secure a loan to assist in their purchase of the property and to contribute to the cost associated with the sale transaction. It is not disputed that the defendant was able to secure a larger loan and that her other contributions to the acquisition of the property may have been greater, but this fact is not sufficient to deny the claimant's 50% interest in the property. Baroness Hale in ***Stack v Dowden*** indicated as much in paragraph 68 of the judgment where she stated:

"It cannot be the case that all the hundreds of thousands, if not millions, of transfers into joint names using the old forms are vulnerable to challenge in the courts simply because it is likely that the owners contributed unequally to their purchase".

[52] Both parties also paid their relevant monthly mortgage payments, though this was interrupted during the claimant's two years of unemployment. When the business grew the claimant continued with his payments and sought assistance when it was needed to clear the arrears in his payments.

- [53] The purpose for which the home was acquired also supports the position that the 50% interest each party holds is not to be displaced. The property was bought as 1 for the benefit of them as a couple and eventually a family.
- [54] The nature of the parties' relationship also speaks volumes as to their shared intention. It is clear on the evidence that the parties throughout their union had pooled and/or shared their resources. They shared the expenses of running the household and conducting their affairs. They made decisions together in their interest as a couple. The arrangement of their finances is also important. The parties held a joint account from which both parties used funds towards the household at their will. The defendant also maintained a personal account, but likewise, the claimant was able to access and use funds from it from time to time for the benefit of the household. It is evident that they conducted the affairs of their lives together as a couple.
- [55] In relation to the renovation of the property in question, this too is accepted as having being jointly done by parties.
- [56] Based on the conduct of the parties, it is abundantly clear from the evidence that an equal beneficial interest was intended at the inception and this remained the same throughout the years of their cohabitation. There was no evident change to this intention. Both parties had acted in relation to the property as joint beneficial owners in the manner in which they arranged their affairs. It would as such be inequitable to deprive the claimant of his equal interest. The defendant has failed in providing evidence to show that the beneficial interest in the property should be different from the legal interest. In the circumstances, both parties are entitled to benefit equally.

First Option to Purchase the Interest of the Other

[57] In his claim, the claimant has asked the court to grant him first option to purchase the defendant's interest in the property. The defendant has also asked the court for the first option to purchase the claimant's interest.

[58] The issue of which party should be granted the first option to purchase the family home was examined in **Annette Rose Page v Lester George Page** [2018] JMSC Civ 151. In that case, the court relied on the case of **Patsy Powell v Courtney Powell** [2014] JMCA Civ 11. D. Fraser J stated at paragraph 98D:

*“In **Patsy Powell v Courtney Powell** the appellant had owned a piece of land on which she had commenced minor construction, prior to her marriage to the respondent. After marriage both parties with the help of family members and others contributed to the completion of the structure which became the family home. The marriage lasted from 1999 until 2005 at which point the appellant excluded the respondent from the family home. One of the issues on appeal was whether the learned trial judge having found that the parties were each entitled to a 50% interest in the family home properly awarded the first option to purchase to the appellant. In upholding the learned trial judge's order on that point, at paragraph 29 Brooks JA had this to say:*

“It is not unusual for the court, in cases such as these, to give the spouse in possession of the former matrimonial home an option to purchase the former matrimonial home. These orders are sometimes supplemented by orders allowing for sale on the open market in the event that the spouse given the option either refuses or is unable to purchase the remaining interest in the property.”

[59] In this case, the evidence is that the claimant has been in possession of the home and resides there. It is more difficult therefore to displace him. Accordingly, I will grant the first option to purchase the property to the claimant. However, if for any reason he is unable to complete the purchase within the period to be stipulated in the final order, that option will determine and pass to the defendant. If neither is able to purchase the share of the other within the requisite time allowed, the property shall be sold on the open market and the net proceeds after any outstanding mortgage or other relevant debt has been satisfied paid to the parties in equal shares.

Rental Income

[60] Where the rental income is concerned, I also find it inequitable for the claimant to pay over to the defendant any rental monies received during her period away from the property. This is in consideration of the fact that, as I find on the evidence, since the defendant vacated the property she has not fulfilled her obligations in respect of the mortgage as well as the property tax payments. The evidence of the claimant, which I accept, is that the rental income has been used to offset some of the expenses for the mortgage. The defendant, I find, is therefore not entitled to any rental income.

Motor Truck

[61] I accept the evidence of the claimant that the truck in contention, otherwise called the 1st truck, was purchased solely by him. His account as to how he acquired the truck seemed to me to be more plausible, even in the absence of documentary evidence. I have considered as well that not only is the title to the truck recorded in the sole name of the claimant, but in addition to this, the arrangement by the parties of their affairs in relation to both the 1st truck and the 2nd truck, shows an intention on the part of them both for the trucks to be separately owned. That to my mind, also accounts for the 2nd truck solely belonging to the defendant. Accordingly, I find that the claimant is solely entitled to the truck in question, registration # CJ4735.

Personal Items

[62] I need not say much on this area as the claimant has agreed to return the washing machine and the stove to the defendant. This leaves the water tank and the glass T.V stand. The evidence is sparse in relation to these items. The claimant has refuted that the items of furniture and appliances were purchased solely by the defendant from her own funds, but said instead that they were purchased from the joint account. I note however that the joint account came into operation in

December 2009. The claimant and the defendant moved to the subject property in December 2008 and there would have been the need for furniture at the time. I therefore accept the defendant's evidence that the items of furniture were purchased from her own funds. There is no evidence of any intention that it was to be jointly owned. In that event, I find that the items in question are the personal property of the defendant and should be returned to her. I accept her evidence also, that the water tank is her personal property, paid for with her own funds. The evidence does not show any credible indication of joint ownership. The water tank should be returned to her as well.

[63] In light of the foregoing, I make the following orders:

- a) The claimant Jermaine McLean and the defendant Rosa Lawrence are each entitled to 50% legal and beneficial interest in all that parcel of land part of Portmore and Port Henderson but now known as Bridgeport in the parish of St. Catherine, being lot numbered one thousand two hundred and fifty-two registered at Volume 1109 Folio 230 of the Register Book of Titles, with civic address known as 40 Lanark Avenue, Bridgeport P.O. St. Catherine.
- b) An updated Valuation Report is to be prepared by a certified Valuator to be agreed upon by the parties within 28 days of the date of this order. Any costs associated with same must be shared equally by both parties.
- c) The claimant is given the first option to purchase the defendant's 50% interest in the property within 90 days of the date of the receipt of the Valuation Report. In this event, the claimant's attorney-at-law shall have carriage of sale and each party shall bear the individual costs associated with the sale.
- d) If the claimant is unwilling or unable to exercise his option to purchase the defendant's interest in the property within the time specified, then the defendant shall have the option to purchase the claimant's interest in the property within 90 days of the expiration of the specified time. In this event, the defendant's attorneys-

at-law shall have carriage of sale and each party shall bear the individual costs associated with the sale.

- e) If the defendant is unwilling or unable to exercise her option to purchase the claimant's share in the property, the property shall be sold on the open market and the net proceeds of the sale divided equally between the parties. In this event, the attorneys-at-law for both parties shall have joint carriage of sale.
- f) The consequential costs arising from the exercise of the sale of the property to a third party must be shared equally by the claimant and the defendant.
- g) Should either party fail or refuse to execute any documents necessary to give effect to the terms of this order, the Registrar of the Supreme Court is empowered to execute the requisite documents.
- h) The defendant is not entitled to any rental income from the subject property.
- i) The claimant is the sole owner of the motor truck registered CJ4735.
- j) The items namely: water tank, glass tv stand, washing machine and stove are the properties of the defendant and are to be returned to her forthwith.
- k) Each party is to bear his / her own costs.
- l) Liberty to apply.

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G. Henry McKenzie
Puisne Judge