



[2013] JMSC Civ. 146

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

**CLAIM NO. 2003 HCV 0852**

**BETWEEN                    MAVIS WALLACE                    CLAIMANT**

**AND                            VERNAL CLARKE                    DEFENDANT**

**Ms. Camille Wignall, instructed by Nunes Scholefield DeLeon & Co. for the Claimant.**

**Mr. Anthony Pearson, instructed by Pearson and Company for the Defendant.**

**IN CHAMBERS**

**Heard: 17<sup>th</sup> October, 1st and 12th November, 2012 and 10<sup>th</sup> October 2013.**

**PROPERTY DISPUTE-JOINT TENANTS-INTIMATE RELATIONSHIP BUT NOT TRULY COHABITING- COMMON INTENTION-RESULTING TRUST-ALTERNATIVELY SHARE BASED ON WHAT IS FAIR AND JUST IN CIRCUMSTANCES**

**Mangatal J:**

[1] This is a claim by the Claimant Mavis Wallace (“Mrs. Wallace”) against the Defendant Vernal Clarke (“Mr. Clarke”) by way of Fixed Date Claim Form in respect of property being Apartment A1 Roehampton Manor, 12 Roehampton Drive, Kingston 10, in the Parish of Saint Andrew, being all that parcel of land registered at Volume 1369 Folio 99 of the Register Book of Titles (“the premises”). Mrs. Wallace and Mr. Clarke are registered as joint tenants in respect of the premises.

[2] Mr. Clarke filed a Defence to the Claim and both parties filed a number of Affidavits. There was extensive cross-examination. On the 12<sup>th</sup> of November, after all of the evidence was completed, I ordered the parties to do the following:

- a. Mrs. Wallace was to file and serve written closing submissions and copies of any authorities relied upon, by the 3<sup>rd</sup> of December 2012.
- b. Mr. Clarke was to file and serve written closing submissions and copies of any authorities relied upon, by the 24<sup>th</sup> of December, 2012.
- c. Mrs. Wallace was to file and serve a reply to any authorities relied upon, if so advised, by the 4<sup>th</sup> of January 2013.

[3] Whilst Mrs. Wallace filed written closing submissions and authorities, Mr. Clarke chose not to file any written closing submissions and has not sought any extension of time for filing same.

### **THE CLAIM**

[4] Mrs. Wallace claims the following relief:

1. **A declaration that the Defendant holds his legal interest in the premises on trust for her absolutely.**
2. **A declaration that Mrs. Wallace is the sole beneficial owner of the premises absolutely.**
3. **An Order that Mr. Clarke executes a transfer of the interest in the premises registered in his name to Mrs. Wallace absolutely.**
4. **Costs to Mrs. Wallace.**
5. **Such further or other relief as the Court deems just.**

[5] The stated basis of the claim is that:

1. **The premises are registered in the name of Mrs. Wallace and Mr. Clarke as joint tenants.**
2. **The premises were purchased by Mrs. Wallace from her own funds entirely.**
3. **Mr. Clarke made no contribution whatsoever to the acquisition of the property.**

4. Mr. Clarke's name was placed on the Registered Title to the property for convenience only.
5. There was no intention at any time for Mr. Clarke to acquire a beneficial interest in the premises.
6. It was at all material times understood and agreed that Mrs. Wallace would be entitled to all of the beneficial interest in the property solely.

### **Mrs. Wallace's case**

[6] In essence, it is Mrs. Wallace's case that the premises were purchased by means of funds which belonged exclusively to her. Further, that there was no common intention at the time of the acquisition of the premises that Mr. Clarke would take any beneficial interest and his name was placed upon the registered title merely as a matter of convenience.

### **Mr. Clarke's case**

[7] In his Defence, Mr. Clarke maintains that Mrs. Wallace does not have full ownership of the premises. He asserts that both his name and that of Mrs. Wallace appear on the registered title as joint tenants because it is reflective of their common intention that they would both have joint legal and beneficial interests in the premises. In relation to their respective shares in the premises, the Defence continues that it was the common intention that they would both be equally entitled and Mr. Clarke consequently claims to be entitled as a beneficial owner as to a one-half share.

### **The Evidence**

#### **MRS. WALLACE'S EVIDENCE**

[8] Mrs. Wallace gave evidence by way of two Affidavits and was extensively cross-examined. She stated that she met Mr. Clarke in or about 1999. At the time that they met she was a widow and pensioner, having been pre-deceased by her husband Lawson Wallace. She was also a diabetic. When she met Mr. Clarke, she was living

alone in a four bedroom house at 1 Westminster Close. She was the sole registered owner of that house, it having been previously owned by herself and her husband as joint tenants.

[9] When she met Mr. Clarke he was married and he told her that he was an ex-policeman. The parties became intimate about a year after they met, but they did not live together. He continued to live with his wife.

[10] In 2004, she decided to sell her house at 1 Westminster Close so as to acquire a smaller place in which to live. She decided to sell it to Lasco Distributors Limited, the owner of an adjoining property and the principal of which had previously expressed an interest in purchasing, even while her late husband had been alive. She approached them in 2004 about selling and they agreed to purchase. It is Mrs. Clarke's case that she sold the house "as is" in 2004, without doing any repairs to it. She said she had done some minor repairs to its roof and done some back seal about two years prior.

[11] When Mrs. Wallace informed Mr. Clarke of her decision to sell and of the agreement that she had reached with Lasco, Mr. Clarke referred her to an Attorney, Mr. Ian Wilkinson, to represent her in regard to the sale and the subsequent purchase of the premises. Mrs. Wallace identified the Roehampton Apartment, ("the premises"), which was smaller than the 1 Westminster Close house, and she gave instructions to Mr. Wilkinson for the proceeds of the sale from the Westminster Close house to be applied to the purchase of the premises.

[12] The house at Westminster Close was sold in 2004 for eight million dollars and the proceeds of the sale were applied to purchase the premises in 2005 at a price of \$4,766,745.00.

[13] At the time of these transactions Mr. Clarke was still married to his wife and continued to live with her at their home at 35 Orchard Avenue. Mr. Clarke however told Mrs. Wallace to put his name on the Roehampton Title along with her own so that if anything, he would be able to assist her in managing her affairs and such matters in the event that she fell ill or encountered any difficulties or disability to attend to her own

affairs. Mr. Clarke assured her that he had no desire or intent to acquire any interest in the property being purchased as he already had properties that he owned.

[14] Mrs. Wallace states that she trusted Mr. Clarke and so agreed to have his name put on the title to the premises along with hers. It was Mrs. Wallace's evidence that their names were registered as joint tenants as she was unaware of any other ways of putting someone's name on a property title. The title to the premises was transferred into the names of both parties as joint tenants in June 2005.

[15] Mr. Clarke did not contribute any money towards the purchase of the premises. It was fully paid for from the house at 1 Westminster.

[16] After the premises had been purchased, Mr. Wallace spent money on the installation of an air conditioning unit, kitchen cupboards and an awning. In September 2005 he advised Mrs. Wallace that he had spent a total of \$200,000.00 on these items and he wanted to be repaid that sum. Mrs. Wallace then as a consequence refunded Mr. Clarke the amount of \$200,000 by way of a manager's cheque, the customer's receipt for which was tendered in evidence, dated 29<sup>th</sup> September 2005.

[17] Mrs. Wallace also avers that she had responsibility for all the outgoings of the apartment including the utility bills and the maintenance, and provided documentary evidence in support of her claim.

[18] Mr. Clarke had also purchased some appliances for Mrs. Wallace's use in the premises; a washing machine, a stove, a refrigerator, a television and a fan. She testifies that she originally thought that they were gifts from Mr. Clarke. However, when the relationship broke down in or about 2009, he took them all back.

**Witness called on behalf of Mrs. Wallace-Mr. Harvey Dawkins**

[19] Mr. Dawkins, who is the owner of an apartment in the Roehampton Complex gave evidence by way of affidavit and was cross-examined. Mr. Dawkins gave evidence that he is the owner of an apartment in the complex and has held the post of President of the Proprietor's Strata Plan Executive (PSP) for the complex for some years. Part of

the responsibility as President was to ensure that the maintenance fees are collected from each owner, that the insurance premiums are paid, and the grounds and common areas maintained.

[20] Roehampton Manor is a small complex with 12 apartments, and the various owners and residents all know each other and generally have a good relationship with each other.

[21] Mr. Dawkins stated that he met Mrs. Wallace in or around 2005 when she moved in to an apartment in the complex, which was on the floor below his. He states that as with other owners, he developed a good relationship with her as a neighbour.

[22] Mr. Dawkins states that he also met Mr. Clarke in or about 2005. Mr. Clarke did not move into the complex but was a frequent visitor to Mrs. Wallace after she moved in. He states that he did not however observe Mr. Clarke's car parked overnight at the complex at any time.

[23] Mr. Dawkins states that with one exception of which he is aware, it was Mrs. Wallace who made all of the maintenance payments and not Mr. Clarke.

[24] Between 2008 and 2009, Mrs. Wallace told Mr. Dawkins that she wanted to sell her apartment. He states that he saw this as an investment opportunity and as a result he expressed an interest to Mrs. Wallace in buying the premises from her. Mr. Dawkins did not ultimately go through with a purchase because he learnt separately from Mrs. Wallace and Mr. Clarke that there was an issue between them as to the ownership of the premises.

[25] Mr. Dawkins claims that in a discussion with Mrs. Wallace she told him that she purchased the premises entirely from her own funds which were themselves the proceeds of sale of a house she had previously owned.

[26] Mr. Dawkins asserts that Mr. Clarke also approached him and told him that he did not make any financial contribution to the acquisition of the premises but that he did

some work on the premises in terms of putting in kitchen cupboards and buying furniture. He also told Mr. Dawkins that he wanted Mrs. Wallace to pay him some money up front in the region of \$2,500,000.00 before he would agree to have his name signed off the title to facilitate any sale. According to him Mrs. Wallace had money in a fixed deposit at the bank that was left over from the proceeds of the sale of her previous house from which she could pay him. According to Mr. Dawkins, Mr. Clarke said that he Mr. Dawkins should therefore convince Mrs. Wallace to do so in exchange for Mr. Clarke giving him a portion of the money. Mr. Dawkins states that he, however, refused. This whole episode and discussion caused Mr. Dawkins some disquiet, and as a result he told Mrs. Wallace that he was no longer interested in purchasing the premises and suggested that she obtain legal assistance on the matter.

[27] Mr. Dawkins gave evidence that he thereafter observed that Mr. Clarke stopped visiting Mrs. Wallace, and one day he observed him removing some appliances from the premises which appeared to be in good condition, including a refrigerator and a television and placing them in a van. He said he also saw when Mr. Clarke drove out behind the van in which the appliances were placed.

### **MR. CLARKE'S EVIDENCE**

[28] Mr. Clarke gave evidence by way of affidavit and was rigorously cross-examined. In his Affidavit evidence, he stated that he is a businessman and he resides at 35 Orchard Avenue with his wife who is disabled and bedridden. In or about 1999 he met Mrs. Wallace and within a short while they both became intimate friends and he took up residence with Mrs. Wallace at 1 Westminster Close.

[29] Mr. Clarke states that although he was then and still is married to someone else, he was the "man of the house" and he undertook chores and responsibilities for the premises at 1 Westminster Close. Although Mr. Clarke in the Affidavit seems to have intended in paragraph 6 of his Affidavit to have stated what these chores and responsibilities included, he never in fact proceeded to do so.

[30] Mr. Clarke says that in 2004, Mrs. Wallace told him that Mr. Lascelles Chin of Lasco had approached her about buying premises at 1 Westminster Close. He and Mrs. Clarke discussed it, and took a decision together that she would not sell the premises yet. According to Mr. Clarke, the house at 1 Westminster Close was badly in need of repairs, and so he set about refurbishing the premises from his own funds in order that it could command a better sale price when offered for sale. That in or about July/ August 2005, they again discussed the matter about the sale of 1 Westminster and they decided that they were now ready to sell.

[31] According to Mr. Clarke in his examination-in-chief, the premises were sold in September 2005, at a sale price of \$8,000,000.00 and the net proceeds of sale amounted to \$6,605,380.00. From the proceeds of sale they purchased the premises for \$4,600,000.00 plus costs. The premises were transferred to the parties as joint tenants on the clear specific instructions of Mrs. Wallace given to their Attorney-at-Law Mr. Ian Wilkinson.

[32] Mr. Clarke and Mrs. Wallace took up residence at the premises in the middle of 2005 and lived there together as “man and wife”. Mr. Clarke states that he regularly paid the monthly maintenance charges.

[33] Mrs. Wallace wanted him to leave his wife and marry her, but he told her that he could not marry her because his wife was disabled and bedridden. Mr. Clarke denies that he told Mrs. Wallace to put his name on the title so that he would be able to render assistance to her or that his name was there as a matter of convenience.

[34] Mr. Clarke claims that he expended sums for the improvement of the premises. He states that Mrs. Wallace “repaid him the money he spent for the improvement of the apartment in the mistaken belief that the repayment of that money would take away the half share interest (he) had in the apartment.”

[35] It is Mr. Clarke’s case that at the time of the acquisition of the premises they had a joint common intention to live there as “man and wife” until such time as they could get married, but without the necessity of Mr. Clarke having to divorce his current wife.

He states that Mrs. Wallace became impatient of waiting and wanted him to divorce his wife. He told her he could not as a result of which their relationship deteriorated to the point where it completely broke down.

[36] Mrs. Wallace has sought to sell the Apartment, but has now realized that Mr. Clarke's consent is needed for the sale of the premises and that the proceeds of sale would have to be divided equally between them.

[37] The electricity bill for the premises is in Mr. Clarke's name and water is in both their names. Mr. Clarke furnished the apartment with a four burner stove, a refrigerator, a washing machine, and a 32- inch television set. After the break up she put them out, causing Mr. Clarke to retrieve them only to have to give them away because of the bad condition they were in.

#### **MRS. WALLACE'S AFFIDAVIT EVIDENCE IN RESPONSE**

[38] Mrs. Wallace denies that Mr. Clarke ever moved in with her or lived with her as man and wife at either 1 Westminster or the premises. Nor did he take on any chores or responsibilities in relation to the premises. She also denies that Mr. Clarke had anything to do with the sale or any refurbishing of 1 Westminster. Mrs. Wallace denied that Mr. Clarke paid the monthly maintenance charges and she exhibited a number of receipts in demonstration of the payments having been made by her.

[39] Mrs. Wallace in addition stated that she at no time asked Mr. Clarke to leave his wife. She claims that she had no desire to marry Mr. Clarke or anyone else after her husband's death and that she made this clear to Mr. Clarke when they became intimate. She indicated that she is maintained by pension received as her husband's widow, and she did not wish to re-marry and lose that. She states that the relationship broke down while she was going through menopause and refused due to its effects to engage in sexual intercourse with Mr. Clarke.

[40] Mrs. Wallace indicated that it is true that the electricity bill for the premises is in Mr. Clarke's name and the water bill is in both their names. She claims that this was

done for convenience only, and that she has been and still is paying those bills without any contribution from Mr. Clarke.

### **THE ISSUES INVOLVED**

[41] Despite the fact that both Mrs. Wallace and Mr. Clarke are registered on the title as joint tenants, is Mrs. Wallace entitled to the whole of the beneficial interest in the premises?

[42] What was the common intention of the parties at the time of acquisition of the premises? Had they later formed a common intention that their shares would change?

[43] If the evidence is not clear as to their actual intentions, what is fair in all of the circumstances?

### **THE LAW**

[44] This claim falls to be determined by the common law. It is to be noted that it is those principles that must guide the court in determining this matter. In the leading House of Lords decision of **Stack v. Dowden** [2007] 2 A.C. 432, referred to by Ms. Wignall, Counsel for Mrs. Wallace, it was held, amongst other things that:

- (a) 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. A joint beneficial interest means an equitable interest in equal shares. The onus is therefore on such a joint owner to show that equity should not follow the law (Paragraph 56)
- (b) Headnote- The law has moved on from the presumption of a resulting trust and many more factors other than the parties respective financial contributions

might be relevant to divining their true intentions; and that when all relevant factors had been taken into account, cases in which the joint legal owners were to be taken to have intended that their beneficial interests should be different from their legal interests would be very unusual.

[45] At paragraphs 68-70, Baroness Hale of Richmond, who gave the leading judgment, provided the following discerning views and guidance:

**“68. 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 name 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 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.**

**69. In law, “context is everything” and the domestic context is very different from the commercial world. Each case will turn on its own facts. 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 the 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 the 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 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.

70. 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."

[46] The relatively recent decision of the English Supreme Court, Jones v. Kernott [2012] 1 A.C. 776, cited by Ms. Wignall, also provides useful guidance. So too does our Court of Appeal's decision in Carnegie v. Foster S.C.C.A. No. 133/98, delivered 20<sup>th</sup> December 1999.

[47] “(1) ...where a family home had been bought in the joint names of an unmarried cohabiting couple who were both responsible for any mortgage, but without any express declaration of their beneficial interests, the starting point was that equity followed the law so that the presumption was that they were joint tenants both at law and in equity; that that presumption could be displaced by showing that the parties had had a different common intention at the time when they had acquired the home or that they had later formed a common intention that their respective shares would change; that the primary search was for what the parties had actually intended and their common intention was to be deduced objectively from their words and conduct; that where it was clear that the parties had not intended a beneficial joint interest at the outset or that they had changed their original intention, but that it was not possible to ascertain whether by direct evidence or by inference, what their actual intention had been as to the shares in which they would own the property, each party was entitled to that share which the court considered fair having regard to the whole of the course of dealings between them in relation to the property; that financial contributions were relevant but there were also other relevant factors which might enable the court to decide what shares had been intended by the parties or were fair; and that each case would turn on its own facts.”

Headnote, and paragraph 51 of Jones v. Kernott.

[48] In the case of a purchase of a property in joint names for joint occupation by a married or unmarried couple, who are both responsible for any mortgage, there is no presumption of a resulting trust arising from their having contributed to the deposit or the rest of the purchase price in unequal shares. The assumptions as to human motivation, which led the courts to impute particular intentions by way of the resulting trust, are not appropriate to the ascertainment of beneficial interests in a family home-  
Jones v. Kernott Headnote, and paragraphs 25 and 53.

## **DISPOSITION AND APPLICATION OF THE LAW TO THE FACTS**

### **Onus of proof**

[49] The parties here being registered on the title as joint tenants, prima facie the case is that both the legal and beneficial interests in the property are joint and equal. The burden of proof is upon Mrs. Wallace to prove that the parties had a common intention that their beneficial interest be different from their legal interests.

[50] As is stated in the cases cited above, each case does turn upon its own facts. The issue of credibility is important in this case. Having had the opportunity to see and observe the parties, to assess their demeanour and countenance, extensive cross-examination having taken place over a period of days, by far and away, I found Mrs. Wallace to be a more credible witness than Mr. Clarke. In his very able cross-examination of Mr. Dawkins, Counsel for Mr. Clarke Mr. Anthony Pearson suggested to Mr. Dawkins that he was a witness of convenience, who had merely come to court to assist Mrs. Wallace with whom he had a close relationship. Mr. Dawkins denied this. However, I found Mr. Dawkins to be a witness of truth who came to tell the Court the truth as he saw it, and to recount the facts and circumstances, in so far as he had an opportunity to observe and experience them. I also accept Mr. Dawkins evidence that although in his Affidavit sworn to in October 2011 he gave his address as being Lot 110 Mount Royal Estate Portmore Saint Catherine, which he had owned from 2003, he was back and forth between his Roehampton Apartment and Mount Royal until sometime in 2011. I accept that he did not move out of the Roehampton complex until the premises at Roehampton were rented in about February 2011. However, whilst Mr. Dawkins stated that he never saw Mr. Clarke's motor vehicle remain overnight at Roehampton, I do not attach any weight to that evidence since in the best of circumstances, it would be difficult for one neighbour to observe all the goings on regarding visitors of another neighbour, much less Mr. Dawkins, who was going in between living at two places.

[51] One of the critical features in this case is that here it is not in dispute that Mr. Clarke remained married to someone else. I think the truth as to the living relationship

between the parties lies somewhere between what they both have said. In other words, I reject Mr. Clarke's evidence that he was living with Mrs. Wallace either at 1 Westminster or at the premises "as man and wife". However, I also find it hard to believe that Mr. Clarke never over-nighted or spent considerable time with Mrs. Wallace at the premises, given his name being put on the Title to the premises and his purchase and furnishing to the premises of items such as the four burner stove, refrigerator and washing machine. In my judgment, this case is quite unique and may well be a hybrid. I find that the parties had an intimate relationship, a more permanent relationship than a "visiting" relationship, but not one where they could be said to be cohabiting together in the full sense of the term. I accept Mrs. Wallace's evidence that Mr. Clarke continued to reside with his wife, whether she was ill and bed-ridden or otherwise.

[52] I accept the evidence of Mrs. Wallace that the entire proceeds for the purchase of the premises was provided by her, from the sale of the 1 Westminster property and I also accept that Mr. Clarke did not make any contribution or fund the refurbishing or repair of the premises at 1 Westminster Close. The 1 Westminster property was sold in 2004 and not September 2005 which Mr. Clarke had originally tried to suggest. In re-examination he claimed that it had to be some error in the typing of the date in the affidavit, and that it really was, as Mrs. Wallace said, in 2004. However, I saw this as a credibility issue since, by trying to say it was 2005, Mr. Clarke attempted to convince that the sale was delayed so he could effect repairs to it before the sale.

[53] In my view, the importance of this relationship between the parties, even if it could properly be termed cohabiting in a broad and loose sense, is that the application of principles to do with the presumption of resulting trusts can far more readily be accepted than would be the case with a couple who are truly cohabiting and are both responsible for a mortgage as discussed in **Jones v. Kernott**.

[54] I find as a fact that it was Mrs. Wallace who provided the entire purchase proceeds in respect of the premises. After some thought on this point, I formed the view that Mrs. Wallace did put Mr. Clarke's name on the title for convenience only. I accept her evidence that she suffers from severe diabetes and that she would sometimes as a

result experience black outs. I find that Mr. Clarke did tell her he had other properties in his name, including with his wife so that he would not be interested in acquiring any interest in the property and she should just put his name on so he could assist her with her affairs if she became ill or had other problems dealing with her affairs. I accept Mrs. Wallace's evidence that it was Mr. Clarke who asked her to pay him back the money he had expended, when in 2005 Mrs. Wallace gave Mr. Clarke the manager's cheque for \$200,000.00. The request for reimbursement by Mr. Clarke, shortly after the acquisition of the premises, and his encashment of the cheque, suggest to me and confirm that there was no intention for Mr. Clarke to have any beneficial interest in the house.

[55] I find as a fact that these two people did not pool resources, and it was Mrs. Wallace that paid most of the outgoings by herself, including the maintenance. I reject Mr. Clarke's evidence that he undertook chores and responsibilities at 1 Westminster, and although he asserts that he was maintaining and undertaking financial responsibilities for two households, he has provided no evidence, credible or otherwise, of his ability so to do. I also accept Mrs. Wallace and Mr. Dawkins' evidence that it was Mr. Clarke who came and took out the items, being the washing machine, stove, refrigerator, television and fan. It was not that Mrs. Wallace had put those items outside. Mr. Clarke did not achieve any positive gains for his credibility when in his Affidavit evidence he made the claim that Mrs. Wallace had put the articles out and that they became exposed to the elements. Yet in cross-examination he said that he left at 8 a.m. to get someone with a van to help him with the appliances, and was back by 9 a.m., one hour later, and he saw the appliances out on the verandah. It was extracted from him that it was this one hour period that he was referring to as "exposure to the elements". The evidence shows that the verandah was covered. At the very least, I formed the impression that Mr. Clarke was trying to mislead the Court. I accept Mr. Dawkins' evidence as to the conversation he had with Mr. Clarke as to Mr. Clarke wanting to have Mrs. Wallace pay him out before he would sign in respect of a sales agreement for the premises.

[56] Alternatively, I find that by way of the presumption of resulting trust, which has not been rebutted by Mr. Clarke, Mrs Wallace having supplied the entire purchase price

for the premises, she is solely entitled to the beneficial interest in the property. As a further alternative, even if here it was clear that the parties had not originally intended a joint beneficial interest or the parties had changed that intention, but it was not possible to ascertain whether by direct evidence or inference what their actual intentions were as to the shares they would each have. It seems just and fair in the circumstances, having regard to the whole course of dealings between the parties in relation to the property, particularly Mrs. Wallace's reimbursement to Mr. Clarke of sums he claimed to have expended, and the fact that she contributed the entire purchase proceeds, that Mrs. Wallace should be solely entitled to the entire beneficial interest in the property.

**[57] There will therefore be judgment for the Claimant Mrs. Wallace as follows**

1. It is declared that the Defendant holds his legal interest in property known as Apartment A1 Roehampton Manor, 12 Roehampton Drive, Kingston 19 in the Parish of Saint Andrew, being the property contained in Certificate of Title registered at Volume 1369, Folio 99 of the Register Book of Titles on trust for the Claimant absolutely.
2. It is declared that the Claimant is the sole beneficial owner of the said property contained in Certificate of Title registered at Volume 1369 Folio 99 of the Register Book of Titles absolutely.
3. It is ordered that the Defendant do execute a transfer of the interest in the said property registered in his name to the Claimant absolutely. This is to be done by December 31, 2013.
4. In the event of the Defendant's failure, neglect or refusal to transfer his registered interest as ordered in paragraph 3 above, the Registrar of the Supreme Court is hereby empowered to sign the Instrument of Transfer and all other documents necessary to effect the transfer to the Claimant.
5. Costs of this action to the Claimant to be taxed if not agreed.
6. Liberty to Apply