



each professed love for and trust in the other and eventually they agreed that he would seek to identify a house for her to purchase.

By October of 2008 when she had paid, yet another visit to the island, a house had been identified and she had paid for it. It is located in Greenwich Park in the parish of St. Ann and is comprised in a registered title. Both their names were registered on the title as tenants in common. The house was at least partly furnished, at her expense, during that October visit.

On her next visit to Jamaica in January 2009, she noticed changes in the relationship and thereafter it completely deteriorated. She now wants a clean break from Mr Darlington and wishes his name to be removed from the title to the property. The furniture, which was purchased in his name, she also wishes to be declared to be hers. She has brought this claim seeking a declaration that she is the sole beneficial owner of the property, the furniture and a motor car. She says that she also completely financed the purchase of the motor car.

Mr. Darlington resists this claim. He accepts that it was Mrs Maddern who financed the purchase of the house but asserts that she had told him that she was purchasing the house as a gift to him. He says that he relied on that assertion and accepted title to the property on that basis. He insists that he purchased some of the furniture and that he put up half of the purchase price of the motor car. On his account the car has since been sold.

The issues to be resolved by the court are mainly issues of fact; was the real property bought as a gift to Mr. Darlington or not; and how were the various chattels, the furniture and the motor car financed.

At common law, it is well established that a person who provides the money to purchase property is presumed to be the beneficial owner of that property despite the fact that the property is purchased in the name of another. The title holder is presumed to hold the property on a resulting trust for the person providing the financing.

This is a rebuttable presumption and it may be rebutted by evidence that the financier had some other intention. The onus of proof rests therefore, on the person who asserts that there was some other intention, for example, that the purchase was by way of gift. The presumption may also be displaced by circumstances whereby the equitable principle of a presumption of advancement would apply.

Ms Dana Campbell, appearing for Mr. Darlington, submitted that a presumption of advancement would apply in the instant case but I cannot agree with that submission.

The presumption of advancement applies where the donor is under a duty, even a moral duty, to provide for the party in whose name the purchase is made. It therefore applies to cases of a father purchasing in the name of his child and to a husband purchasing in the name of his wife. This presumption appears gender-biased because it does not normally apply in respect of a wife purchasing in the name of her husband, nor where a mother purchases in the name of her child.

The presumption of advancement has been held not to apply to cases of a man and his mistress or paramour. In both the cases of *Soar v Foster* (1858) 4 K & J 152; 70 ER 64, and *Austin and another v Austin* (1978) 31 WIR 46, the respective courts held that, this presumption does not apply in favour of a man's mistress, even if they had gone through the format of a wedding ceremony. For the presumption to be effective in situations involving men and women, the transferee must be the lawful, or at least

presumed, wife of the person financing the purchase. Mr Darlington fails to secure the benefit of the presumption on two counts; he is neither female nor married to the financier. Having dealt with that aspect, I return to the evidential burden which Mr Darlington bears in respect of this case.

In their evidence given on affidavit and in cross-examination, Mrs Maddern and Mr Darlington disagreed on a number of things but these were mostly with regard to whether she had sent him money in response to various requests he had made due to one problem or another he is supposed to have indicated that either he or some member of his family was having. Although neither of these parties was particularly impressive as witnesses, I generally preferred Mrs Maddern's evidence. It was more plausible for the scenario which has been described as existing between them during the good times of their relationship.

*The real property*

On the main issue of the reason for the purchase of the house Miss Maddern's testimony was that she had intended to purchase a house in the Caribbean. She said that she had originally intended to make that investment in Barbados but that on the development of the relationship with Mr. Darlington she decided to purchase in Jamaica instead. She denies any intention to make a gift to Mr. Darlington as she has two sons whom she would want to benefit from her investment.

Mr Darlington's account was that with the relationship developing and Mrs Maddern deciding to visit the island more frequently, it was their decision that it would be more economical if she could stay with him rather than at a hotel or villa. It was however not convenient to accommodate her at his home which was in rented premises

and which he shared with another person. It was for that reason therefore, that Mrs Maddern said, according to him, that she would purchase a house for him and that she could stay there when she visited the island.

Although neither of these witnesses were convincing as candid, I have very easily come to the conclusion that, on a balance of probabilities, Mrs Maddern's evidence is to be preferred. I reject Mr Darlington's evidence as to the reason for the purchase. In my view, no gift was intended. I find that Mr Darlington's name was included in the transfer because he was the person in the island handling the transaction and also because he had told her that there was a need for urgency in signing the documentation and concluding the transaction.

It is true that accepting title along with him would raise a question in the mind of a mature woman such as Mrs Maddern is, and it did. I believe her evidence that she accepted his explanation that his name was on the transfer documentation to speed up the process of securing the house.

The intention of the parties at the time of acquisition is the important starting point for determining how the beneficial interest is to be ascertained. In this case I find that the intention at the time was for Mrs Maddern to have accommodation in Jamaica and Mr Darlington's name was placed on the title out of convenience.

In this short-lived affair, and I use the term advisedly, there was no time to alter that original intention.

Finally on this issue, Mr Darlington says that he built a retaining wall on the property in reliance on Mrs Maddern's statement that the property was a gift to him. His expenditure was in the region of \$23,000.00. The wall in question was a few inches high

and constructed in the vicinity of the driveway of the premises. There are a number of cases which have established that making minor contributions to the improvement of a property will not vest a beneficial interest in the contributor. Perhaps the clearest exposition of this principle was made in the important case of *Pettitt v Pettitt* [1969] 2 All ER 385. In that case a husband, who had carried out decorative and other work (including constructing a brick side wall) on a house owned by his wife, was held not to have, thereby, acquired any interest in the house. Apart from the fact that I reject Darlington's evidence that any promise of a gift was made to him, I do not find that that expenditure warrants a finding that he acted to his detriment.

I find that Mr Darlington's input was an insignificant improvement to the property which Mrs Maddern had just spent over \$12.5M in acquiring. It is reminiscent of the sort of improvement made by the husband in *Pettitt*. He has no beneficial interest in the real property.

Ms Campbell also submitted that the fact that Mr Darlington had the utility bills placed in his name should redound to his benefit in the context of a finding that the promise of a gift was made to him. I reject that submission. The fact is that Mr Darlington was the person in Jamaica available to enter into the contracts with the utility companies. In any event, he was the person who would mainly benefit from those facilities, as Mrs Maddern did not live in Jamaica.

#### *The furniture*

Mrs Maddern also claims ownership of certain items of furniture which she said was purchased with her money. Mr Darlington agrees that she sent \$600,000.000 for the purchase of furniture. He says he used that money together with some other money left

over from what she had sent to finance the purchase of the house, in purchasing furniture for the house.

He insisted however that he purchased a television and a refrigerator with money that he had borrowed from monies which an uncle of his had been entrusted to him. Mrs Maddern accepted that he had said that he would purchase the television from his uncle's funds but she insisted that the refrigerator was purchased with her monies. Again the probabilities favour Mrs Maddern. The majority of the furniture was purchased in September and October 2008, clearly in time for Mrs Maddern's arrival. The disputed refrigerator was purchased on 26/9/08. It was on the same invoice with a gas stove, mattress, washing machine, entertainment centre and wardrobe. That bill was in the sum of \$312,709.16. It is more likely that it was financed in total by Mrs Maddern's money.

On 1/10/08 another set of furnishing was purchased. It included a 42" Television, a Home Theatre System, a wall fan and a living room suite. That bill was \$289,144.86.

On 28/10/08 another mattress was purchased. A coffee table was also purchased on that date. I find it significant that Mrs Maddern only spent 2 weeks in Jamaica in October 2008. All these purchases, with the exception of the television set, I find, were purchased with Mrs Maddern's funds. Based on the documentation provided by Mr Darlington, it appears that some items were purchased on hire purchase. It is not entirely clear to me, however, which items were purchased on hire purchase terms and which were not.

A solar heater purchased in July 2009 for \$122,000.00 I also find was purchased using her funds Mr Darlington simply did not have the wherewithal to finance these purchases. Mr Darlington says he earned about \$32,000.00 per month as salary but

sometimes would earn more than that in tips. At the time that the first of these purchases were being made he had had about US\$2,000 saved. Conversely, Mrs Maddern had provided him with \$600,000 together with whatever had been the excess left over from the purchase of the house. That would be a pool of funds from which to purchase these items. In my view Mr Darlington has no beneficial interest in the solar water heater or in any of the items of furniture except for the 42” television set.

*The motor car*

The motor car is however a different matter. It was purchased for approximately \$570,000, on Mr. Darlington’s account. He says that Mrs Maddern contributed \$250,000.00 toward the cost and that he paid the rest.

I find that he is not to be believed. Mr Darlington simply did not have the resources to finance this purchase. As a demonstration of that which I have outlined above concerning his income, his specific evidence in respect of the car was that he found it more economical to park the car than to put in \$1000.00 worth of gas in order to drive it to work.

However, there has been an important development; the car has been sold. There is no asset in which to declare an interest and this is not a claim for recovery of money had and received. There is no authority to declare that Mr Darlington owes a debt to Mrs Maddern. I shall, therefore, make no order in respect of the motor car.

**Conclusion**

On the questions of fact raised by the evidence, I prefer the evidence of Mrs Maddern as being more credible on a balance of probabilities. I find that she financed the entire expenditure on the real property and that it is held by them in trust for her. The



furniture, with the exception of the 42” television set, I find was also solely financed by her. The motor car, having been sold, the court will make no declaration in that regard.

The orders are as follows:

It is declared that:

1. The Claimant Mrs Jeanne Maddern is entitled to the entire beneficial interest in all that parcel of land, with buildings thereon, known as Lot # 105 Greenwich Park in the parish of Saint Ann, being all the land comprised in Certificate of Title registered at Volume 1393 Folio 463 of the Register Book of Titles (hereafter called ‘the property’);
2. The Defendant Mr Stevie Darlington holds his legal interest in the property in trust for the Claimant;
3. The Claimant is solely entitled to all the items of furniture in the property, including two bedroom sets, a three piece settee, a refrigerator, a washing machine, and a stove;
4. The Defendant is solely entitled to a 42 inch Toshiba television set located at the property;

It is ordered that:

1. The Defendant shall, on or before 15 July 2011, deliver or cause to be delivered to the Claimant’s attorneys-at-law, the duplicate Certificate of Title for the property;
2. The Defendant shall execute an instrument of transfer and such other documents as may be required to transfer the entire legal estate in the property to the Claimant;
3. The Registrar of this court shall be and is hereby authorised to sign any and all documents required to give effect to this order, should the Respondent fail or refuse to do so within ten days of being required in writing so to do;
4. If the Defendant fails or refuses to deliver up the said duplicate certificate of title the Registrar of Titles is hereby authorised to cancel the said certificate of title for the property and issue a new certificate of title in its stead;

5. There shall be no transfer tax or stamp duty payable in respect of the transfer of the title in accordance with this order;
6. The Defendant is hereby restrained from taking any step to sell or dispose of the property or the furniture mentioned above;
7. The Defendant must quit and deliver up the property to the Claimant on or before 15 July 2011;
8. Liberty to apply;
9. Costs to the Claimant to be taxed if not agreed.