



[2023] JMSC Civ. 97

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2019CV03708**

<b>BETWEEN</b>	<b>SOPHIA REID</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>EDWARD OAKLEY</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Mr. Josemar Belnavis and Ms. Aaliyah Green, Attorneys-at-Law for the Claimant instructed by Lindsay Law Chambers, Attorneys-at-Law.

Ms. Gillian Mullings and Ms. Abigail Henry, Attorneys-at-Law for the Defendant instructed by Naylor & Mullings, Attorneys-at-Law.

**Heard:** April 17, and June 6, 2023

**REAL PROPERTY- APPLICATION FOR BENEFICIAL INTEREST IN PROPERTY-  
EQUITABLE REMEDY- CONSTRUCTIVE TRUST- WHETHER THE CLAIMANT IS  
ENTITLED TO A BENEFICIAL INTEREST IN THE PROPERTY IN QUESTION.**

**P. MASON J (Ag.)**

**BACKGROUND**

[1] The Claimant, Sophia Reid, filed a Fixed Date Claim Form and an Amended Fixed Date Claim Form on September 16, 2019, and on the 12<sup>th</sup> of July 2022 respectively. In the Amended Fixed Date Claim Form, the Claimant seeks the following orders against the Defendant, Edward Oakley:

*“1. A Declaration that Sophia Reid is the sole legal and beneficial owner of property registered at Volume 1289 Folio 256 of the Register Book of Titles and is entitled to exclusive possession thereof, the*

*Defendant's interest in the said property being extinguished by way of adverse possession and/or section 3 of the Limitation of Actions Act.*

*2. Consequent to a Declaration being made in terms of paragraph one (1) herein, this Honourable Court also makes an Order directing the Registrar of Titles to cancel the Certificate of Title for the property registered at Volume 1289 Folio 256 of the Register Book of Titles bearing the name of the Defendant and to issue a new Certificate of Title in the sole name of the Claimant, as the registered proprietor.*

***3. In the alternative, a Declaration that the Claimant is entitled to a seventy percent (70%) legal and beneficial interest in the property registered at Volume 1289 Folio 256 of the Register Book of Titles by way of constructive trust and/or proprietary estoppel.***

*4. Consequent to A Declaration being made in terms of paragraph three (3) herein, that this Honourable Court make the following Orders and directions:*

*I. The property be valued within thirty (30) days of the date of this Order by a reputable Valuator to be agreed upon by the Claimant and the Defendant. If the parties fail to agree on a valuator, then the Registrar of the Supreme Court is empowered to choose a valuator within sixty (60) days of the date of this Order.*

*II. Costs of the valuation to be borne in portions as ordered by the Court at paragraph 3 above.*

*III. The Claimant be given the first option to purchase the interest of the Defendant, if any, in the property and to make a deposit within 60 days of the agreed valuation. In any event, the Claimant shall exercise her option to purchase the Defendant's interest, if any, within six (6) months of this Order.*

*IV. The Claimant's Attorneys-at-Law are to have Carriage of Sale.*

*V. If the Defendant refuses to sell his interest in the said property, the Claimant be added to the Duplicate Certificate of Title registered at Volume 1289 Folio 256 of the Register Book of Titles with the Defendant as tenants-in-common in unequal shares in the portions ordered by the Court at paragraph 3 (I) above.*

*5. The Registrar of the Supreme Court be authorized to sign any and all documents related to the transfer and or sale of the said property and any document necessary for compliance with any of the Orders made herein, if either party refuses or is unable to sign and/or effect same.*

*6. Costs and Attorneys Costs to the Claimant*

*7. Liberty to apply.*

*8. Such further and/or other relief as the Honourable Court deems just.”*

**[2]** On the morning of the trial, Counsel for the Claimant withdrew Order 1 and instead proceed with Order 3 only which dealt with the issue of her entitlement to a share in the property by virtue of constructive trust and/or proprietary estoppel.

### **THE CLAIMANT’S CASE**

**[3]** The Claimant’s evidence is contained in the following affidavits:

- I. Affidavit of Sophia Reid in Support of Fixed Date Claim Form filed on September 16, 2019.
- II. Supplemental Affidavit of Sophia Reid in Support of Fixed Date Claim Form filed on October 7, 2022.
- III. Affidavit of Kemar Carlton Daley in Support of Fixed Date Claim Form filed on October 21, 2022.
- IV. Affidavit of Sophia Reid in Response to Third Affidavit of Edward Oakley filed on March 29, 2023.

**[4]** The Claimant’s evidence is that she is the former common law spouse of the Defendant. The union produced two children namely Amardo and Romaine Oakley. She stated that herself and the Defendant were common law spouses and were acknowledged by all who knew or were associated with them as such.

**[5]** The Claimant claims that the relationship between herself and the Defendant began in 1993. At that time, she had already had two children. The Defendant lived with her at her parents’ home in Independence City, Portmore in the parish of St. Catherine between 1993-1996.

- [6]** The Claimant and the Defendant began living at Lot 801 Daytona, Greater Portmore in the parish of St. Catherine being the land comprised in Certificate of Title registered at Volume 1289 Folio 256 in the Register Book of Titles (hereinafter referred to as “the subject property”) in 1996.
- [7]** The Claimant claims that herself and the Defendant found out about the subject property from a mutual friend. The cost of the property being \$495,000.00 at the time. She states that when the property was purchased in 2002, herself and the Defendant agreed that since he was working at the Wyndham Hotel and receiving a monthly salary, making monthly payments to the National Housing Trust (NHT) and she was a Higgler at the time, that he would purchase the property in his name through the NHT and they would be co-owners.
- [8]** She claims that before the property was purchased in 1996, the Defendant told her that they would both own the property in equal shares and as future co-owners of the subject property, she should contribute Fifty Thousand Dollars (\$50,000.00) to the acquisition of the said property.
- [9]** She further stated that there was a common understanding between the parties that based on her contribution of the Fifty Thousand Dollars (\$50,000.00), that they would both own the property in equal shares.
- [10]** She claims that they both lived at the property as if they were husband and wife with their children from 1996 until 2002 when the Defendant vacated the property to live in the United States of America (“USA”).
- [11]** She states that based on the understanding that she would own the property jointly with the Defendant, she paid the mortgage from 2002 until 2014 when the Defendant blocked her from making the payments after discovering that she had lodged a caveat on the title to the subject property.
- [12]** She further stated that since the Defendant emigrated to the USA, she has paid all the bills which includes, light, water and property taxes up until the date of the issuance of this claim on the common understanding that the property was beneficially owned by herself and the Defendant.

**[13]** Since the Defendant emigrated to the USA in 2002, she has undertaken substantial improvements to the property including adding two bedrooms, a living room, bathroom, washroom, veranda and a kitchen. Ms. Reid avers that she solely purchased the materials used for the said improvements as well as the tiling, installation, fittings, and fixtures. She further claims that the Defendant did not object to the said improvements.

**[14]** She claims that the property is now a three-bedroom, two-bathroom property and that her daughter, Melissa Daley- Gonzalez, as well as her son, Kemar Daley, have since been permitted by her to invest money into the property by improving same and adding an upstairs portion to it. They are currently living at the said property.

**[15]** She further states that she has been the sole person who acted in the capacity as the owner of the property since the Defendant left Jamaica in 2002.

**[16]** The Claimant further, in her evidence, stated that after the Defendant moved to the USA, he sent her money through Western Union on several occasions but that those funds were sent primarily to take care of the Defendant's mother who was living with her after the Defendant migrated. She stated also that he would on some rare occasion send funds for the benefit of his son, Romaine Oakley. He would also send other funds which she states would not have been enough to improve the house or to pay the mortgage.

## **DEFENDANT'S CASE**

**[17]** The Defendant's case is contained in the following affidavits:

- i. Affidavit in Response of Edward Oakley filed on May 27, 2022
- ii. Affidavit of Edward Oakley filed on November 11, 2022
- iii. Third Affidavit of Edward Oakley filed on January 16, 2023

**[18]** The Defendant's evidence is that he had a visiting relationship with the Claimant in the 1990's. As it relates to the deposit, he claims that he received a loan from the Bank of Nova Scotia for \$50,000.00 and repaid same on his own. He further stated that the Claimant was not a part of those transactions nor was she ever

to be included or assist with any of the obligations that arose from the loans he obtained.

**[19]**He stated that at all material times, during the purchase of the property and thereafter, the Claimant was unemployed and primarily stayed home to care for her children. He further averred that she was never in a position to assist nor contribute to the purchase of the home or to any financial obligation that was contingent to the acquisition.

**[20]**He further stated that the Claimant became pregnant with their first child and both parties moved into the subject property in 1995, due to the fact that the Claimant was living in a volatile area, and he wanted to ensure that his child was safe and secure.

**[21]**He further claims that both himself and the Claimant lived together for about 3 years after which the relationship broke down and he migrated to the USA where he married in 1998. He further states that he completed his move to the USA in or around 2002 and that he permitted the Claimant to remain at the property. He stated that he sent funds from the USA to finance the maintenance of the children and for the payment of the mortgage loan on the property.

**[22]**According to Mr. Oakley, there was no understanding between himself and the Claimant that the property would be owned jointly in equal shares neither did the Claimant use her own money or resources to improve the home.

**[23]**He stated that he began the improvements to the property in or around 1996 and that the Claimant at all material times acted as his agent in the additions and improvement to the property. She instructed the construction workers on his behalf and collected monies from the Western Union to finance the improvements.

**[24]**He further stated that the only construction of which he was unaware that was done without his consent or outside the scope of his instructions, was the construction of a concrete wall as the fencing for the property. He asserted that apart from that wall, all the housing improvements were financed by him.

[25] He also claims that at all material times he maintained his rights as owner of the property and has continued to service his mortgage to date. He further claims that out of his initial love and care for the Claimant and her children, he had been slow to take action for their removal from the premises.

[26] I will now move on to the relevant submissions made by Counsel. I will only outline that which is beneficial in assisting me with the ventilation of the relevant issues.

### CLAIMANT'S SUBMISSIONS

[27] Counsel for the Claimant, Mr. Belnavis, submitted that the doctrine of constructive trust would arise and is vested in the uncountable conduct of the Defendant. He referred to the case of **Lorna Holding v Seymour Thorpe** [2018] JMSC Civ 188 which sets out the doctrine at paras [52] and [53]:

*"A constructive trust arises where it would be unconscionable for the legal owner of property to claim sole entitlement to the beneficial interest. In McCalla v McCalla (supra), McIntosh JA outlined the principle as follows at paragraph 27 –*

*"It is settled law, approved and applied in this jurisdiction in cases such as Azan v Azan [1985] 25 JLR 301, that where the legal estate in property is vested in the name of one person (the legal owner) and a beneficial interest in that property is claimed by another (the claimant), the claim can only succeed if the claimant is able to establish a constructive trust by evidence of a common intention that each was to have a beneficial interest in the property and by establishing that, in reliance on that common intention, the claimant acted to his or her detriment. The authorities show that in the absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties.*

*"*

*The Claimant in this case must satisfy the court that:*

*a) There was the existence of a common intention that she and the Defendant were to have a beneficial interest in the property and;*

*b) That she, in reliance on that common intention, acted to her detriment.*

*This common intention must also have existed at the time when the property was acquired. Nourse LJ at page 431 of Grant v Edward [1986] 2 All ER 426, said:*

*"In most of these cases the fundamental and invariably the most difficult question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties, almost always from the expenditure incurred by them respectively. In this regard the court has to look for expenditure which is referable to the acquisition of the house..... If it is found to have been incurred, such expenditure will perform the twofold function of establishing the common intention and showing that the claimant has acted on it."*

**[28]** Counsel submitted that the Claimants evidence will illustrate that not only did the Claimant and the Defendant seek out the property together, but the Claimant financially contributed to the deposit paid on the property and made several mortgage payments thereon. He further submitted that both the Claimant's and the Defendant's actions are consistent with the necessary ingredients of a constructive trust.

## **DEFENDANT'S SUBMISSIONS**

**[29]** Counsel for the Defendant, Ms. Mullings, submitted that it is trite law that once the property is registered in the name of the Defendant, the legal estate is in his name and prima facie carries with it the complete beneficial interest. Counsel referred to the case of **David v Thomas** [2016] JMSC Civ 174.

**[30]** Counsel referred to the dicta of Lord Diplock in **Gissing v Gissing** [1970] 3 WLR 267 who states:

*"Any claim to a beneficial interest in land by a person whether spouse or stranger, in whom the legal state is not vested must be based upon the proposition that the person in whom the legal estate is vested, holds it as trustee on trust to give effect to the beneficial interest of the claimant as 'cestui que trust'."*



[31] Counsel submitted that the case further explains that the authorities reveal a distinction between conduct from which a common intention can be inferred and conduct on the other hand which demonstrates that a party acted to their detriment in reliance on the common intention. (**Grant v Edwards** [1986] 72 All ER 426).

[32] Counsel for the Defendant asserted that the Claimant has not put before the Court any evidence to support the assertion that there was indeed an agreement between the parties nor evidence to support that she gave these monies including the deposit to the Defendant.

[33] Counsel submitted that in reliance on **Davis** (*Supra*), in the absence of evidence to support these bare assertions, the Claimant has failed to show that there is a common intention. Counsel further submitted that the Defendant did not include the Claimant's name on the title and there is no evidence that there was an agreement to how the home expenses would be accounted for.

[34] Counsel further submitted that on a forensic examination of the evidence before the court, the Claimant has failed to establish that there was a common intention for her to acquire a beneficial interest in the subject property thereafter acting in reliance on the said common intention to her detriment.

## ISSUE

[35] The issues to be determined by this court are:

- (a) Whether Ms. Reid is entitled to a seventy percent (70%) share of the legal and beneficial interest in the subject property?
  - i. Whether there was a common intention that both parties would have a beneficial interest in the property at the time the property was acquired;
  - ii. Whether Ms. Reid acted to her detriment in reliance on the common intention;
  - iii. What is the extent of Ms. Reid's beneficial interest in the subject property?

## LAW

[36] Nembhard J in the case of **Horace Boswell v Jennifer Johnson** [2019] JMSC Civ 17 at paragraph [29] describes constructive trusts as follows:

*[29] A constructive trust arises in respect of the acquisition of land whenever it is shown (i) that the apparent common intention of the person in whom the legal estate is vested (the legal owner) and the person claiming a beneficial interest in the land (the claimant) was that the claimant should have a beneficial interest in the land and (ii) that the claimant has carried out acts in reliance on that apparent common intention of such a substantial nature and so referable to the acquisition, renovation or improvement of the property, as to render it inequitable to deny the claimant his or her intended interest.*

[37] In describing constructive trusts, Calys Wiltshire J. (Actg) (as she then was) at paragraph [16] of **William Rainford v Opal Rainford** [2017] JMSC Civ 102 referred to the case of **McCalla v McCalla** [2012] JMCA Civ 31:

*“[16]...On constructive trusts, McIntosh JA, in delivering the judgement in **McCalla v. McCalla** [2012] JMCA Civ 31, said as follows:-*

*“It is settled law, approved and applied in this jurisdiction in cases such as **Azan v Azan** (1985) 25 JLR 301, that where the legal estate in property is vested in the name of one person (the legal owner) and a beneficial interest in that property is claimed by another (the claimant), the claim can only succeed if the claimant is able to establish a constructive trust by evidence of a common intention that each was to have a beneficial interest in the property and by establishing that, in reliance on that common intention, the claimant acted to his or her detriment. The authorities show that in the absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties.”*

[38] In **Halsbury Laws of England (2019), Volume 98**, paragraph 114, it is stated as follows:

*“A constructive trust attaches by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust*

*but which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property.”*

[39]The case of **Lloyd Banks v Rosset and Another [1991] AC 107** succinctly examined at length the principles concerning constructive trusts. This case is discussed at length in the case of **Stephenson Green v June Green [2018] JMSC Civ 51** by Pettigrew-Collins J where she stated at paras [17], [18] and [19] as follows:

*“[17] .....In that case, the family home was purchase by the husband in his sole name from money he inherited from his family trust funds. Even though the contract of purchase was not yet complete, the husband and wife were let into the property. The wife carried out decorative work at her expense and urged on the contractors whilst they worked, with a view to completing the renovations so that the family could move in by Christmas. Unknown to the wife, the husband entered into an arrangement with his bank for an overdraft on his account and gave the bank a lien over the property in question to guarantee his indebtedness to the bank. The account was overdrawn beyond what was agreed and the bank declined to extend further credit to the husband. The overdrawn funds were for the most part utilized for the renovation of the property. The husband failed to honour his obligations to the bank and the bank claimed possession of the property and an order for sale. The husband did not contest the bank’s claim. By this time the husband had separated from his wife and had vacated the property. The wife resisted the bank’s claim on the basis that she held an equitable interest in the property by way of a constructive trust.*

*[18] The court at first instance rejected the wife’s claim that there was an express agreement between herself and her husband that the property would be jointly owned by them, or that there was a common intention formed before the contract was entered into for the purchase of the property, that the wife would have a beneficial interest in the property. However, on the basis of the wife’s input into the renovation of the property, prior to the completion of the contract of sale, the judge drew an inference of a common intention that the wife would have a beneficial interest in the house and found that the wife in fact had a beneficial interest in the property in question. The case was determined in the bank’s favour based on the provisions of English Legislation which has no application in our jurisdiction. The wife appealed. The court of appeal overturned the decision at first instance and the bank appealed to the House of Lords.*

[19] The House of Lords rejected the findings of the judge at first instance. In delivering his judgment, Lord Bridge of Harwick had the following to say at pg. 22 of the judgment

*“The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made, it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal interest to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel.”*

He went on to say that

*“In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation, direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments will readily justify the inference necessary to the creation of a constructive trust. But as I read the authorities, it is at least very doubtful whether anything less will do.”*

[40] In the case of **Grant v Edwards [1986] EWCA Civ J0324-2**, the Vice-Chancellor, Sir Nicolas Browne-Wilkinson, summarized the principles laid down by Lord Diplock in the case of **Gissing v Gissing (1971) A.C. 886**. In order to establish a beneficial interest in property, Sir Browne-Wilkinson summarized the nature of the substantive right as follows:

*“If the legal estate in the joint home is vested in only one of the parties (“the legal owner”) the other party (“the claimant”), in order to establish a beneficial interest, has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated: (a) That*

*there was a common intention that both should have a beneficial interest; AND (b) That the claimant has acted to his or her detriment on the basis of that common intention.”*

**[41]** In describing what constitutes common intention Sir Brown Wilkinson had this to say:

*(a) Direct evidence (905H):*

*It is clear that mere agreement between the parties that both are to have beneficial interests is sufficient to prove the necessary common intention. Other passages in the speech point to the admissibility and relevance of other possible forms of direct evidence of such intention: see at page 907C and page 908C;*

*(b) Inferred common intention (906A-908D):*

*Lord Diplock points out that, even where parties have not used express words to communicate their intention (and therefore there is no direct evidence), the court can infer from their actions an intention that they shall both have an interest in the house. This part of his speech concentrates on the types of evidence from which the courts are most often asked to infer such intention viz. contributions (direct and indirect) to the deposit, the mortgage instalments or general housekeeping expenses. In this section of the speech, he analyses what types of expenditure are capable of constituting evidence of such common intention: he does not say that if the intention is proved in some other way such contributions are essential to establish the trust.”*

**[42]** In summarizing the quantification of the said right, Sir Brown Wilkinson further stated:

*“Once it has been established that the parties had a common intention that both should have a beneficial interest and that the claimant has acted to his detriment, the question may still remain “what is the extent of the claimant’s beneficial interest? This last section of Lord Diplock’s speech shows that here again the direct and indirect contributions made by the parties to the cost of acquisition may be crucially important.*

*If this analysis is correct, contributions made by the claimant may be relevant for four different purposes, viz.: (1) in the absence of direct evidence of intention, as evidence from which the parties’ intentions can be inferred; (2) as corroboration of direct evidence of intention; (3) to show that the claimant has acted to his or her detriment in reliance on the common intention. Lord Diplock’s speech does not deal directly with the nature of the detriment to be shown. (4) to quantify the extent of the beneficial interest.”*

[43]In *Horace Boswell v Jenifer Johnson* (supra), Nembhard J stated at paragraph [32] that:

*It is not necessary to the creation of a constructive trust in respect of the acquisition of land for the claimant to show that the common intention of the claimant and the legal owner was that the claimant would acquire an interest only if he or she acted in a certain way and that the claimant had acted in the agreed way in order to acquire that interest. That analysis would state the law too narrowly. (See – Lloyds Bank Plc. v Rosset and Another [1991] 1 AC 107.)*

## ANALYSIS

**ISSUE:** Whether there was a common intention that both parties would have a beneficial interest in the property at the time the property was acquired?

[44]There is no evidence of any express agreement made between the parties as to any interest in the said property. In this particular case, the court will have to look at the conduct of the parties to ascertain the common intention to share the property beneficially which could give rise to a constructive trust.

[45]Both parties conceded that they lived at the property from around 1995/1996 together with their children until 2002 when the Defendant migrated to the USA.

[46]In this particular case, Mr. Oakley is the sole legal owner of the property in dispute. According to Ms. Reid, both herself and the Defendant found out about the property from a mutual friend who worked at the NHT. She said that the property was purchased in the Defendant's sole name because at the time, she was working as a Higgler and a Part-time Actress and was not receiving a monthly salary or contributing to the NHT. She said at the time, the Defendant was working at the Wyndham Hotel where he was receiving a monthly salary and was making monthly contributions to the NHT. Ms. Reid further claims that based on an agreement between the parties that she would acquire a beneficial interest in the property, and in reliance on the said agreement, she contributed \$50,000.00 to the deposit.

[47] However, Mr. Oakley indicated that there was no such arrangement. He claims that he heard about the opportunity to purchase the house from a friend he worked with while he was at Wyndham Hotel. He further stated that the \$50,00.00 for the deposit was obtained by virtue of a loan facility he obtained from the Bank of Nova Scotia and that he repaid same on his own.

[48] There is conflicting information as to how the property was obtained and despite the information provided by both parties, there is no evidence however advanced to this court which verifies any of this information.

[49] Ms. Reid stated that she obtained the \$50,000.00 from her job as an actress in the Pantomime and Higglering. Mr. Oakley in cross examination stated that he recalled Ms. Reid going away to act on 2 occasions but that she was unemployed. However, he then agreed with counsel that she must have gotten compensated. Her son, Mr. Daley also stated that his mom would leave home for work, but he did not know what work was.

[50] The fact of the matter is that neither party has advanced any documentary evidence in this court as to how the deposit for the house was obtained. What I find interesting, however, is that Mr. Oakley did not venture to present evidence to prove that he obtained the \$50,000.00 from the loan facility from BNS which would effectively disprove Ms. Reid's statement that she gave him the funds. I therefore do not accept that evidence.

[51] To repeat the statement of Lord Bridge of Harwich "*In this situation, direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments will readily justify the inference necessary to the creation of a constructive trust.*"

[52] I will now proceed to look at the mortgage payments.

## **MORTGAGE PAYMENTS**

**[53]**As it stands, there is no evidence as to any oral agreement between the parties.

The Claimant asserts that on the understanding that she was a beneficial owner of the property, she paid the mortgage from 2002 after the Defendant migrated to the USA until 2014 when he blocked her from making the payments when he discovered that she had lodged a caveat on the title to the disputed property.

**[54]**The Defendant, however, asserts that this was never the case. He claims that he would send the Claimant money through Western Union remittances which she would then use to make the mortgage payments. He claimed that the Claimant could not have financed the payments herself as she was unemployed. The receipts presented by Mr. Oakley evinces money sent to Ms. Reid between 2003 and 2005.

**[55]**Under cross-examination, Ms. Reid admitted that Mr. Oakley would send her funds through Western Union once per month. As it relates to the purpose of these funds, she claimed that Mr. Oakley and herself would have discussions over the phone. In cross-examination, Mr. Oakley admitted that sometimes he would send money to Sophia, but it was not always for her.

**[56]**Mr. Oakley in his evidence stated that after receiving notification from NHT in or around 2007 that the mortgage had increased, he began sending payments directly to NHT through Western Union. He further stated that he also informed the NHT office in 2007, that there were mortgage payments made without his consent and that going forward, they were not to accept any further payments from other individuals without a signed letter of authority. The court accepts this evidence.

**[57]**The receipts provided by Ms. Reid indicated monthly mortgage payments in her name starting from 2002 to 2007. There is no other receipt which corroborates her assertions that she made payments up until 2014. Mr. Oakley indicated that in 2007 he started to make the mortgage payments directly through Western Union. In the absence of any further evidence presented by Ms. Reid, the Court



finds that Ms. Reid has failed to prove that she made the payments to NHT beyond 2007.

## **MAINTENANCE AND IMPROVEMENTS TO THE PROPERTY**

**[58]**Ms. Reid in her evidence stated that after the Defendant emigrated in 2002, she undertook substantial repairs to the said property including adding two bedrooms, a living room, a washroom, verandah and kitchen. She stated that she solely purchased the materials used for the improvements. She also further stated that she solely financed the tiling, installation of fitting and fixtures and that the Defendant did not object to these improvements however, in a further affidavit she stated that he did not consent.

**[59]**This assertion was however challenged by Mr. Oakley who stated that Ms. Reid was not working and as such against her assertions, she could not have been personally able to finance any improvements or additions to the subject property. He further stated that he would send the claimant monies through remittance services to take care of the property. Mr. Oakley claims that he was aware of the improvements to the property and that the only construction which was done without his consent or outside the scope of his instructions was the construction of a concrete wall as the fencing for the property.

**[60]**Mr. Oakley further stated that all the house improvements were financed by him from monies he sent to the Claimant over the years to finance the construction costs of the improvements and additions.

**[61]**Clearly, there is conflicting information as to the source of the funds used for the improvements to the property since Miss Reid did not have permanent employment and reliable cash flow. In any event, considerable improvements were done to the property. I am of the view that the monies remitted by the Defendant could not alone finance the renovations. Ms. Reid presented some bills evidencing purchases made towards the renovations.

**[62]**There is no dispute that the legal estate is vested in the Defendant. In all the years that the Defendant was absent from the jurisdiction, it is safe to say that

the Claimant remained in the house with her children and assisted with the improvements, whether the assistance was with funds she provided from sporadic employment or monies provided by the Defendant through the mortgage from NHT and/or funds from his employment. Regardless of how it was done, it must be accepted that the Claimant would have played a large role with the improvements albeit to her detriment. In addition, there is no proof provided that the Defendant remitted monies on a monthly basis.

**[63]** I am of the view that recognition must be given to her for her involvement and the fact that she was in the jurisdiction to supervise and take charge of all the renovation work. Clearly, the extent of the renovations could not have been satisfied solely by the funds remitted by the Defendant which paid the mortgage, provided for his children, his mother, and the property. The Claimant must have contributed financially to the improvements during the period of construction on the property.

**[64]** Based on the foregoing discussion, I am of the view that all the ingredients are present to establish that there was a common intention for the Claimant to acquire a beneficial interest in the property by way of a constructive trust. In the case at bar, the legal estate in the property is vested in one person (the Defendant) and a beneficial interest in the property is claimed by the other (the Claimant). To establish a constructive trust, there must be evidence of a common intention that each was to have a beneficial interest in the property, and by establishing that, reliance on that common intention, the Claimant acted to her detriment, which has been established by her acts.

**[65]** The authorities show that in the absence of express words (as in the instant case), evidencing the requisite common intention, it may be inferred from the conduct of the parties. Lord Diplock in *Gissing v Gissing* (*Supra*) points out that even where the parties have not expressed words to communicate their intention, the court can infer from their actions an intention that they both have an interest in the property.

**[66]** It is noted from the authorities that such intention can be contributions, whether direct or indirect, to the deposit, mortgage instalments, or several housekeeping expenses. It is established from the facts of the instant case that the Claimant carried out all these functions.

**[67]** Even if at some point the Defendant objected to her paying the mortgage and doing some improvements, he never presented himself in the jurisdiction after he left in 2002 to visit the property. In one of his affidavits, the Defendant claims he did not visit the property because he was threatened. However, I do not accept this evidence. There were certain measures that could have been undertaken by the Defendant to have this issue rectified.

**[68]** There is no evidence to indicate that the Defendant inquired about the status of the property in his interactions with the Claimant. It can be reasonably inferred that improvements to the property was not a priority for him or, he felt that the property was being properly looked after.

## **CONCLUSION**

**[69]** Based on the aforementioned discussion, I am of the view that there is sufficient evidence to establish a constructive trust. It can be inferred from her commitment and conduct that the Claimant's actions are consistent with and constitute a constructive trust. It can also be inferred that the couple agreed and has some discussions about sharing the property when the relationship was a happy one and as such, they both acted accordingly. Halsbury Laws has aptly coined the concept of a constructive trust.

**[70]** The court also finds that based on the whole course of conduct between the parties in respect of the subject property, it is not sufficiently demonstrated that the Claimant is entitled to a 70% beneficial interest in the property. The Court is of the view that Ms. Reid's whole course of conduct in respect of the subject property indicates that she has some interest in the subject property and in that regard, the court grants Ms. Reid 40% beneficial interest in the subject property.

## ORDERS

[71] Based on the above, I therefore make the following orders:

1. The property located at Lot numbered Eight Hundred and One on the plan of part of Reids Pen now called Daytona, Greater Portmore comprised in Certificate of Title registered at Volume 1289 Folio 256 of the Register Book of Titles in the name of Edward Oakley is declared to be held on constructive trust by the Defendant, Edward Oakley, on behalf of the Claimant, Sophia Reid;
2. The Claimant, Sophia Reid, is declared to have a 40% beneficial interest in the said property;
3. The said property is to be valued by a reputable Valuator to be agreed upon by the Claimant, Sophia Reid, and the Defendant, Edward Oakley, within sixty (60) days of the date hereof. Should the parties fail to agree on a Valuator, the Registrar of the Supreme Court shall be empowered to choose a Valuator within sixty (60) days of the date of this Order;
4. The cost of the Valuation Report is to be borne by the by the Claimant and the Defendant in the percentage of their respective share in the said property, as has been determined by this Honourable Court;
5. Upon a determination of the market value of the said property, the Claimant, Sophia Reid, has the first option to purchase the Defendant's, Edward Oakley's, share in the property, as has been determined by this Honourable Court;
6. Should the Claimant, Sophia Reid, fail to execute an Agreement for Sale, in exercise of the option to purchase pursuant to paragraph (5) of this Order, then the Defendant, Edward Oakley, shall be at liberty to purchase the Claimant's interest in the said property, as has been determined by this Honourable Court, within 90 days of expiry of the Claimant's option to purchase;

7. In the event the Defendant, Edward Oakley, fails to execute an agreement for sale in the exercise of his option to purchase as provided for in paragraph 6, the subject property may be sold on the open market with the proceeds being divided into percentages of share interest as has been determined by this court;
8. Should the Defendant, Edward Oakley, fail to execute an Agreement for Sale, in exercise of the option to purchase pursuant to paragraph (6) of this Order, within 90 days as indicated at paragraph 6, then the Claimant, Sophia Reid, is to be added to the Duplicate Certificate of Title registered at Volume 1289 Folio 256 of the Register Book of Titles with the Defendant, Edward Oakley, as tenants-in-common, in the percentage of their respective share in the said property, as has been determined by this Honourable Court;
9. The Registrar of the Supreme Court is authorized to sign any and all documents necessary to give effect to the Orders made herein in the event that either party refuses or neglects to do so, either by himself or herself or by their Attorneys-at-Law;
10. Costs of this application to the Claimant to be agreed or taxed;
11. Each party is to bear his and her own cost as it relates to all other matters;
12. The Claimant's attorneys-at-law shall have carriage of sale in the exercise of the Defendant's option to purchase;
13. Liberty to apply.
14. The Claimant's attorneys-at-law shall prepare, file, and serve this order.