



[2025] JMSC CIV. 156

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2024CV01178

BETWEEN

PEGGY SAMUELS

CLAIMANT

AND

PAUL BLACK

DEFENDANT

IN CHAMBERS

Judith Cooper Batchelor instructed by Chambers, Bunny and Steer for the Claimant.

Tamara Powell-Francis for the Defendant.

Heard: The 23rd of September, 26th of November, the 19th of December 2025

Property Rights – Constructive Trust – Common Intention. Title to investment homes bears the names of both parties in a void marriage – Whether there was a common intention that the wife is entitled to the entire beneficial interest. Whether the husband is entitled to compensation for mortgage payments and improvement of the property.

THOMAS; J

Background

[1] In 2015, the parties in the instant claim, who were both previously married to other spouses, went through a ceremony of marriage. In January 2018, a house, the subject of this claim, which is located at lot 331 Drax Hall Country Club, St. Ann, and registered at volume 1491 folio 879, (herein after referred to as the subject property) was purchased in the names of both parties as tenants in common, for investment purposes. The claimant, Ms. Samuels, was the person who paid the initial deposit as also the closing

cost. The balance of the purchase price was financed by a loan from Victoria Mutual Building Society. There was no common residence shared between the parties as the claimant ordinarily resided in the Turks and Caicos Islands while the defendant resided in Jamaica. In 2020, on a petition to the court by the claimant Ms. Samuels, the marriage was declared to be null and void on the basis that the defendant Mr. Black was not divorced from his first wife when he purportedly married Ms. Samuels.

[2] Ms. Samuels has filed this current claim seeking, inter alia, that she is the sole owner of property located at lot 331 Drax Hall Country Club, St. Ann registered at volume 1491 folio 879; that the defendant delivers up possession of the property forthwith.

[3] The foundation of her claim is that she only added Mr. Black's name to the property as she believed he was her husband and she entrusted him to deal with the property to include the connection of electricity, in her absence. In refuting the claim, Mr. Black contends that his name was added to the property because he is part owner. He claims 50 % interest in the property and contends that in addition to mortgage payments, he has expended moneys from his personal funds in improving the property.

The Issues

[4] The issues for determination by this court are.

- i) Whether there was a common intention for the defendant to hold the legal title in common with the claimant for the sole benefit of the claimant.
- ii) Whether the defendant is entitled to monetary compensation based on direct financial or other contribution to the improvement or maintenance of the property.

Whether there was a common intention for the beneficial interest in the property to be different from that which is reflected on the legal title

The Evidence

The Claimant's Evidence

[5] In her sworn affidavits which were permitted to stand as her evidence in chief, the evidence of the claimant on this issue is as follows:

She got married to the Defendant on the 13th of November 2015. At that time, she was living Turks and Caicos, and he was living in Jamaica. They discussed owning a home and agreed to purchase a property in Jamaica. She found a property at lot 331 Drax Hall Country Club, St. Ann registered at volume 1491 folio 879. She came to Jamaica to view the property and decided to purchase it in just her name. She made that decision because the defendant did not give her any money towards the purchase. The purchase price was \$24,500,000.00. She applied to Victoria Mutual Building Society for a mortgage and was granted a United States Dollar mortgage. She paid all the costs for the sale and submitted the documents for transfer of the Title in her name to her Attorney-at-Law. Within a few days the defendant convinced her to put his name on the title as he said that he would not be able to assist her with connecting the utilities or anything that would need to be done as his name was not on the title and he would not have authority to act. Since she was unable to stay in Jamaica to get all the utilities connected, she agreed. On that basis she instructed her attorney to put the defendant's name on the transfer. His name was registered with hers on the title as tenants in common. She also believed that because he was her husband, he would be trustworthy. She would not have done it if they were not married.

[6] She states that when she decided to purchase the property, she did contemplate putting the defendant's name on the title, this was subject to him contributing to the purchase of the property. She mentions that she was required to give the Real Estate Agency a prequalification letter. This she says she got from Victoria Mutual Building Society. (She exhibits" a copy of the letter dated May 24, 2017.)

[7] Ms. Samuels avers that; the defendant was not able to produce a letter because he did not have a stable income from a job. She asserts that they had no discussion about

a family home in Jamaica because the defendant did not want to live in Jamaica and that he did not want his church to find out about his remarriage, so it was done in secret. She says that she was supposed to apply for residency for Mr. Black in the United Kingdom as she is a citizen there and as his plan was always to go to the United Kingdom to reside. She says further that she never intended to reside at Drax Hall; the property was strictly for investment.

[8] She states that the documents including the mortgage deed were in her sole name until she sent a letter by email dated December 11, 2017, to Ricardo Ellis of Victoria Mutual Building Society to add the defendant's name. (She exhibits a copy of that letter) She asserts that she did not intend to share her investment with the defendant as he did not give her any money towards the purchase; the rent was used to pay a portion of the mortgage and she paid the balance. She also asserts that the Defendant was occupying the 1-bedroom 1-bathroom side of the house and that he did not pay any of the mortgage save and except for 3 payments.

[9] Ms. Samuels asserts that in 2018 the defendant called her and told her that he just realised that he was not divorced when he purported to marry her and so she had the marriage annulled. (She exhibited a copy of the decree absolute of nullity.) She says that in August 2019 she asked the defendant to vacate the property so that it could be rented as she was having a difficulty with paying the mortgage: He moved out of the property and back to his mother's home but kept complaining about the tenant and then gave her notice and moved back into the property.

[10] She explains that in 2019 her mother got sick and as she had to pay her health expenses she was not able to send money regularly for the payment of the mortgage and so the mortgage was in arrears. She says she again asked the defendant to vacate the property so that it could be rented as a 3-bedroom house as this would be enough to cover the full mortgage payment: At first, he refused to move out but finally agreed.

[11] She states that she made arrangements to have the full property rented and that it was after she had collected a month's rent and deposit for the whole property that Mr. Black told her that he added a small bathroom to the kitchenette, and he was living there.

She asserts that it was when he noted that she was angry that he told her that it was not a permanent structure, but that it was built with sheet rack. She states that she had to return the lady's deposit and that the mortgage was then USD3,000.00 in arrears and she had collected USD2,400.00 from the lady. She affirms that the property is now rented, at USD1,200 per month that goes directly to the mortgage, but the defendant is still in occupation of a section. She says that for 2023 the defendant paid approximately USD800.00 toward the mortgage.

[12] Ms. Samuels also says that she decided that she did not want to remarry the defendant and that when they discussed the issue of the ownership of the house, he agreed that it was hers and that he would transfer it to her. She further says that; she engaged the services of an attorney; the relevant documentation was prepared; the defendant signed the transfer; the transfer process was delayed because the bank refused to release the title because of the arrears; and while waiting to pay off the arrears the defendant changed his mind and now refuses to complete the transaction. (She exhibits a copy of a letter of authority.)

[13] . She mentions that when the defendant changed his mind, she was very angry and sent the defendant WhatsApp messages expressing her displeasure at his actions and that he assured her that the house was hers. She says that the defendant also sent her an email on April 5, 2020, seeking to appease her after refusing to transfer the property to her. (She exhibits copies of the screen shots of messages and a copy of the email between herself and the defendant.)

[14] Ms. Samuels asserts that even though the defendant's name appears on the title he always knew that he has no interest in her property. She also asserts that there was never any period of time that the defendant believed that he had an interest in the property, as in all the discussions that they had about the property he acknowledged that he did not have an interest in it She adds that she has loaned the defendant thousands of dollars over the years which he has yet to repay

[15] Ms. Samuels Evidence on cross-examination is as follows:

It is true that during their marriage they worked together as a team. Before Lot 331 was acquired, they had worked together on other business ventures. One such venture was Agroturks, a farm selling farm supplies, operated in Turks and Caicos. In relation to that business there was a joint account held in hers and the defendant's name. In 2017, the defendant Mr. Black, was issued with a national insurance registration card from the Turks and Caicos. It is correct that she was also filing for the defendant to be a resident in the Turks and Caicos Island. She admits that she and the defendant agreed to purchase a property in Turks and Caicos. She was trying to purchase a piece of property. In the Turks and Caicos Islands and when she told him about it, he wanted her to add his name to it, which she did not. She is unsure whether defendant owned property in Plantation, St. Ann, as she had never seen any documents relating to such property. The defendant had spoken to her about land he owned in Plantation. They had never discussed him taking a loan to build on it or that such a plan would require her to be the sole applicant for the mortgage on Lot 331.

[16] She asserts that she was the one who located Lot 331 in Drax Hall and that after finding it, she sent photographs of the property to the defendant. She acknowledges that the defendant was the first to visit Lot 331 and that when she later visited the property herself, they went together. She insists that there was no agreement for her to shoulder the initial purchase costs alone. She acknowledges that the defendant brought her to VMBS for the purpose of securing the mortgage but denies that he played an "integral" financial role in the acquisition. She insists that the plan was that both parties would contribute to the deposit, while a mortgage would cover the remainder of the purchase price.

[17] She confirms that she had regularly corresponded with the defendant by email during their marriage, regarding matters related to the property. and that in June 2017, she did write to him about Lot 331, confirming that they were moving forward with the purchase in accordance with the modifications they had requested. She acknowledges her email in which she stated, "Praise the Lord, please see the agreement that was modified according to our request. So, we are moving forward with the purchase as planned."

[18] She agrees that it had been understood that the property, once purchased, would require retrofitting for use as an Airbnb. She does not agree that the defendant was to bear financial responsibility for these upgrades. She asserts that while improvements

were needed, she consistently sent money toward expenses. She was aware of some of the improvements but not all of them. She denies that the agreement was for her to pay the initial cost of the purchase while the defendant was financially responsible for improvements and contribution to the mortgage. She admits that she had only visited the property twice and spent for no more than three days each time.

[19] She agrees that previous to Lot 331 she owned a property in St. Andrew. This was held jointly with her ex-husband and that she also owned property with her ex-husband in Turks and Caicos. She denies knowing that a letter of authorization would have sufficed for Mr. Black to engage with the utility companies. She denies that Mr. Black was solely responsible for the rental of the property. She agrees that he paid all the maintenance fees for the property.

[20] She agrees that she had not always been able to send money regularly toward the mortgage, and as a result the mortgage had fallen into arrears. She agrees that they were both working together as a team until she learned that the marriage to his first wife had not been dissolved. She says that she then realized that the marriage was bigamous and she was she scared because she did not want to be a part of anything illegal. She admits that she felt hurt betrayed and felt that the defendant could not be trusted, as she did all these things with the defendant and he still married.

[21] She denies that her claim to 100% ownership of this property is because of that breach of trust. She does not remember the year that the defendant told that her he was still married. She does not recall herself and the defendant having any issues as to the property ownership prior to being told by the defendant that his marriage to his first wife had not been dissolved. She agrees that in 2022, she had a disagreement with the defendant about the rental of the property. She does not agree that she did not communicate in any way with the defendant as it was the defendant who blocked her. She agrees that she did not visit this property at all between 2022 and 2024 but denies that this was because she knew that the defendant was an equal owner and that as an equal owner, he will continue to manage this property.

[22] She rejects the assertions that there was an agreement between the defendant and herself about the time that the marriage was annulled, for the payment of \$17.5 million for the transfer of the other half interest in the property and that it was when he did not receive the said payment that he indicated to her that he would not be transferring his interest to her.

[23] On re-examination she states that she had tried to have the property rented but Mr. Black assumed control and blocked her. She also states that the building she and her ex-husband owned in Jamaica, was not completed before it was sold, so she had no experience of connecting utilities.

The Evidence of the Defendant

[24] The evidence in chief of the defendant, Mr. Black are contained in his affidavits which were permitted to stand as his evidence in chief. He states that he and the claimant discussed owning an investment property in Jamaica and agreed to make this purchase in their joint names. He says that by the year 2017 he was residing fully in Jamaica and after the claimant learnt of the sale of the said property online, he went to view it and then consequent upon further discussions between them, the claimant visited Jamaica and they both visited the property, so she could also view it.

[25] He states that the purchase price for the said property was Twenty-Three Million Five Hundred Thousand Dollars (\$23,500,000.00) and that the claimant agreed that she would be the sole applicant for this mortgage because of the need to secure another mortgage, for construction in his sole name in relation to land already in his possession which would later serve as their family home. He avers that up to this point, the issue of a family home remained unsettled because they continued to reside in different places and he and the claimant agreed that they would not share a home until the issue of his divorce and remarriage had been settled with his local congregation – which up to this point, had different views on both matters and was unaware of their union

[26] He contends that there was, no issue regarding the sharing of this investment which they hoped to utilize as an Air BnB; which would fund itself from continuous short-

term rentals. He states that on March 6, 2017, he brought the claimant to his local bank (Victoria Mutual Building Society (V.M.B.S Linstead) and introduced her to the branch manager, Ms. Cherese Stewart for purpose of completing the mortgage application for the purchase of the said property and that from the outset he and the claimant discussed, agreed and intended that the said property would be owned jointly, thus the duplicate certificate of title would bear both their names.

[27] Mr. Black asserts that it was because of this understanding, that documents, such as the Instrument of Transfer and Mortgage Deed were prepared in both their names and signed by both of them, even though the claimant was the sole applicant for the mortgage loan. (He exhibits copies of the Instrument of Transfer, and Mortgage Deed.) He indicates that the letter of possession, letter to the National Land Agency and letters to the utility companies also appear in both their, names. He explains that on March 6, 2017, when they visited his local bank, he and the claimant and opened two (2) accounts in their names – a local and a U.S. dollar account, the second of which was to be used by both of them for the payment of the mortgage.

[28] He states that; a sum of Eight Hundred Fifty Thousand Dollars (\$850,000.00) was left by the claimant in the local account to assist with acts of improvement which they both agreed were necessary to have the said property retrofitted for use as an Air BnB; they both knew and understood that this sum was inadequate to construct a perimeter fence, build a kitchenette and do other things, but as a co-owner he would also be actively contributing to this process. He contends that he was not placed in charge of the workmen but was the person who singlehandedly managed and exercised control over the said property and this included but was not limited to maintenance, repairs, improvements, rental amongst other things and that at the close of the transaction, he was the person who visited the vendor's offices and collected the keys for the said property.

[29] Mr. Black mentions that he has been solely responsible for the monthly maintenance payments which moved from Eight Thousand Five Hundred Dollars (\$8,500.00) per month in February 2018 to Ten Thousand Dollars (\$10,000.00) monthly in 2023, and that as at December 2024, he paid approximately Seven Hundred and Forty-

One Thousand Five Hundred Dollars (\$741,500.00) to Drax Hall Country Club Management Company Limited. (He exhibits copy receipts for payment of maintenance.) He contends that the maintenance fees have never been paid from any rental income from the said property.

[30] It is also the contention of Mr. Black that with the exception the 2022-2023 tax year when he attempted to make payment, but was advised it was already paid, he has been solely responsible for the payment of property taxes. (He exhibits copy property tax receipts.) He states that the monthly cost for gardening has always been his sole responsibility and that starting in 2018 he paid Four Thousand Five Hundred Dollars (\$4,500.00) fortnightly for this expenditure; this sum increased to Six Thousand Dollars (\$6,000.00) in 2024 at which time an additional sum of Nine Thousand Dollars (\$9,000.00) was also expended quarterly for the cutting of the large trees and shrubs on the property

[31] Mr. Black avers that in 2017; he requested from his first wife a copy of the decree absolute at which time he discovered that his first marriage had not been dissolved until 2017. This he says, he immediately communicated to the claimant who then applied for, and on the 3rd day of March 2020 obtained a Decree Absolute for the dissolution of their marriage. He says that he has not only been actively involved in the management and development of the subject property, but in the community as well, as he served as the President of the Homeowners Association in 2019; has served on different committees including the security committee up to 2024; has served as a member of the election committee; and he currently functions as the liaison officer with the Forestry Department for the tree planting project in this development and in the wider Drax Hall Area.

[32] He states that “in 2019,” when he advised the claimant of the status of his previous marriage, the claimant started discussions regarding the division of the property by asking him to purchase her share of the property. The discussions, he says went back and forth between them for some time until he decided to transfer his interest to her in exchange for “certain sums”. He alleges that, when no payment was forthcoming from the claimant, he indicated that he would no longer be going through with the transaction.

[33] He asserts that at no time did he agree that this property was solely owned by the claimant since they have always agreed and understood that he owned 50% interest and that his total contributions to the said property have far exceeded the claimant's own contribution. He claims that it was understood that he would borrow more monies at the time for the second mortgage, for they believed that he would have needed approximately forty million dollars (\$40,000,000.00) for that expenditure. He indicates that they did not plan to live together in Jamaica at the time because of the church's view on remarriage, so they discussed living elsewhere for the time being, that is, in the United Kingdom or Canada; however, they would have shared a family home in Jamaica eventually.

[34] Mr. Black maintains that it was agreed that the duplicate certificate would be in their joint names; that the bank's policy was for the requisite documents to be signed by both of them; so when the claimant wrote to the bank to have his name added to the bank's documents, he was already a part of the process and integrally involved.

[35] He also alleges, that they agreed for the improvements to be made, which included, but was not limited to the construction of the perimeter wall and as the co-owner living in Jamaica at the time, he would actively manage these improvements and meet these expenses then. He states that in light of the inadequacy of the monthly rental before November 2022, both he and the claimant at different times, were forced to supplement the mortgage payment from their personal resources.

[36] He contends that this investment property has always been "our" plan until he advised the claimant that the marriage to his first wife had not been dissolved at the time they believed, and that it was thereafter that she wanted nothing to do with him and expressed that she no longer wished to hold the property jointly. He further contends that the "I's" in relation to this property have only come about during the course of these proceedings.

[37] Mr. Black asserts that; at no time were moneys loaned to him by the claimant during the period of the property's acquisition or any time afterwards; in speaking of "loans", the claimant is in fact making reference to sums advanced to him during their marriage which neither of them considered or believed to be such; he sent money to the

claimant for personal use when she was low on funds and she would do the same for a particular expenditure. He states that it was only after they were separated did the claimant first speak of "loans" made.

[38] On cross examination Mr. Black's evidence is as follow: When asked what was the agreement between himself and Ms. Samuels when Lot 331, was being purchased, he states that ;when they first decided that they were going to purchasing a house, they came up with a plan that they were going to be doing an investment home and that Ms. Samuels would have been applying for the loan for that house; they also agreed that the loan would have been in her name alone because he had plans to take out a separate mortgage to build on a land that she knew about that he had acquired prior to this discussion; he would build on it eventually and thus he was saving his application for a mortgage from the same institution with which to build that house on.

[39] He indicates that he did not purchase the land in his name but in his sister's name. He admits that he did not build on that land nor did he give Ms. Samuels an interest in that land but states that it was purchased prior to their marriage. He insists that his plan was to borrow \$40 million using that land as security, but admits that, that plan did not come to fruition and that Ms. Samuels did not benefit from that land because he sold the property in 2020 He however states that approximately \$4 million of the monies were used in the improvement of the subject property. This money, he states; was used for tiling and plumbing; some of the moneys was used to pay mortgage, in 2021 and 2022,

[40] He admits that he agreed to transfer his legal interest in the house to Ms. Samuels and that he did sign the letter authorizing the transfer. but states that they had an arrangement, that she would have paid him, initially, it was \$17.5 million he suggested but he brought it down to \$6.5 million sometime in 2020. When asked how he came up with a figure of \$17.5 million, he states that it was based on their discussion and the fact that 'they had an understanding that they did this together, therefore, looking at the value and the fact that he would have been transferring what he believed to have been his portion because at that time, the house would have been valued at 48 million'.

[41] He agrees that Ms. Samuels was upset after he changed his mind about signing the transfer documents and admits that she did send him WhatsApp messages asking him why he stopped the transfer. He agrees that she did say in those messages that she put his name on the title because she thought they were married and she asked him to turn on the light and the water. He admits that he did send an email to Ms. Samuels but states that he cannot recall exactly, what he said in that email.

The Law

[42] Pertaining to the issue of division of property between spouses the common law principle of common intention, has been replaced by the provisions of the ***Property Right of Spouses Act*** in this jurisdiction. However, considering the fact that the marriage between Ms. Samuels and Mr. Black was declared to be void, in circumstances where he was still the husband of another woman, the ***Property Right of Spouses Act*** is not applicable to any property acquired during their cohabitation. Consequently, the court must have resort to the common law in order to settle any issue as it relates to interest in property between the parties.

[43] The applicable principles in this case rest in the doctrine of constructive trust. In the case of ***Stack v Dowden*** 2007 ALL ER 929, at paragraph 8 Lord Hope of Craig Head stated that:

*"Where the title to a dwelling house is taken in one name only, the presumption is that there is sole ownership in the named proprietor. Where it is taken in joint names those named are common owners and, if the grant does not indicate otherwise, there is a presumption of equality of shares: Kenneth G C Reid, *The Law of Property in Scotland* (1996), para 22. The rights that are thus divided from the outset between those named in the title in the Land Register are rights of ownership. There are no intervening equitable interests. The presumption that the common owners are entitled to share the value of the property equally is however capable of being displaced by evidence to the contrary".*

[44] At paragraph 58 and 59 Baroness Hale had this to say:

"At least in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved. The question is, how, if at all, is the contrary to be proved? Is the starting point the presumption of resulting trust, under which

shares are held in proportion to the parties' financial contributions to the acquisition of the property, unless the contributor or contributors can be shown to have had a contrary intention? Or is it that the contrary can be proved by looking at all the relevant circumstances in order to discern the parties' common intention?

[45] At paragraph 60 she stated:

"These days, the importance to be attached to who paid for what in a domestic context may be very different from its importance in other contexts or long ago. As K Gray and S F Gray, in Elements of Land Law, 4th edition 2005, point out at p 864, para 10.21:

"In recent decades a new pragmatism has become apparent in the law of trusts. English courts have eventually conceded that the classical theory of resulting trusts, with its fixation on intentions presumed to have been formulated contemporaneously with the acquisition of title, has substantially broken down ... Simultaneously the balance of emphasis in the law of trusts has transferred from crude factors of money contribution (which are preeminent in the resulting trust) towards more subtle factors of intentional bargain (which are the foundational premise of the constructive trust) ... But the undoubted consequence is that the doctrine of resulting trust has conceded much of its field of application to the constructive trust, which is nowadays fast becoming the primary phenomenon in the area of implied trusts". ... The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain 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".

Submissions

On behalf of the Claimant.

[46] In relation to the issue of what was the intention of the parties when the property was purchased Counsel for the claimant, Ms. Cooper Batchelor submits that:

- (i) It is agreed that the property was investment property and not intended as the family home. On the issue of credibility, the claimant says she asked the defendant to remove his name from the title, that he initially agreed, and later changed his mind. he contends instead that he had agreed to sell his interest to the claimant. The claimant

exhibits WhatsApp messages and an April 5, 2020, email from the defendant. The documentation supports the claimant, and importantly, the defendant admitted during cross-examination to both the WhatsApp exchange and the email. Nowhere in the exchange does he speak about any monetary payment. He said that he wanted to explain why he didn't sign some documents in the lawyer's office. He makes no mention of money. The only conclusion from the evidence is that the claimant did not intend to give the defendant an interest in the property, and the Defendant knew and agreed.

- (ii) On the issue of whether the void marriage affects the common intention; reliance is placed on the case of **In the matter of the Partition Acts 1868 and 1876, MC, Applicant v BS, Respondent** [2010] 1 IR 107, the parties went through a marriage ceremony and purchased property together. The marriage was later annulled. Herbert J held that "where a marriage was deemed null and void, the just and correct approach was to regard the property as having been purchased by strangers, in the sense of persons who were not in some special relationship with each other to which the law attributed specific rights and obligations. In such a case, where the parties were not and never intended to be cohabitantes, equity presumed that the person who paid the greater share did not intend to make a gift of the difference to the other person and they were deemed to hold the joint tenancy in trust for themselves as tenants in common in proportion to the amounts contributed. This presumption is rebuttable."
- (iii) It is agreed that the Claimant made all the initial payments for the acquisition of the property. This amounted to approximately USD47,374.50. Her payments towards the mortgage from 2018 to 2024. are indicated in the joint account. The defendant has provided figures for the mortgage contributions but contradicted himself regarding his payment of the mortgage. In his first affidavit he

claimed to have paid less than USD20,000.00 in total toward the mortgage, yet in his second affidavit where he highlighted payments in the transaction history for the mortgage account ending in 142 he claimed in his own handwriting that he had paid USD49,095.23. In cross examination, he was forced to admit that the USD49,095.23 figure included rent payments, not just mortgage contributions. The payment of rent the defendant admitted he received were not always reflected in the mortgage account, and he was unable to show the court where the rent was reflected in the account. The defendant was not truthful and stated during cross-examination that the last rent received was in January 2024, but when confronted with receipts, he had to capitulate. Payment of the mortgage does not increase his share in the property. (Counsel relies on the Court of Appeal case of **Stewart v. Stewart** [2013] JMCA Civ. 47)

(iv) The defendant's claims about improvements even if accepted, are not substantial; there is rent he has still not accounted for; most of the so called improvements were carried out without the claimant's knowledge or consent, except for the kitchenette and boundary wall in 2018, which the claimant says she paid for along with any other improvements she authorized. Labour or work done to preserve or benefit the property of another does not entitle the defendant to an interest in the property. (Counsel relies on the case of **Hyacinth Gordon v. Sidney Gordon** [2015] JMCA, Civ, 39,) The defendant placed a number of receipts to support his claim that he financed improvements to the property, including a receipt dated November 11, 2021. When confronted on cross examination with the fact that there was no mention in his affidavit of any construction in 2021 he had to admit this. The Claimant did not intend to give the Defendant an interest in the property. The Defendant was aware that there was no intention to give him an interest in the property. The Defendant did not make any contribution to the purchase of the property. The

Defendant has no interest in the property and ought to vacate forthwith.

On behalf of the defendant

[47] Counsel Ms. Tamara Powel Francis, submits as follow:

- (i) Several authorities outlined the principles which must guide any court in cases in which there is no express declaration of how the beneficial interest should be held. "These are the salient principles: The starting point, where there is joint legal ownership, is joint beneficial ownership. Equity follows the law and, therefore, the parties are [tenants-in-common] both in law and equity...Where the parties are in a position of joint ownership but the quantum of their respective contributions cannot precisely be ascertained, the interests of justice may be best served by awarding the parties equal shares in the property on the principle equality is equity. The presumption of equality can be displaced by showing either: (a) that the parties had a different common intention at the time when they acquired the home; or (b) that the parties later formed the common intention that their respective shares would change. The relevant intention is the intention which was reasonably understood by the other party to be manifested by that party's words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party. The common intention is to be deduced objectively from the parties' conduct. In determining the parties' intention, the court may consider a wide range of factors. Many more factors than financial contributions may be relevant to deciding the parties' true intention. Context is everything and each case will turn on its own facts. When a couple are joint owners of a

home, and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be different from the inferences to be drawn when one is the only owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. 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. These principles, though outlined in the context of the purchase of property used as the family home, are equally applicable to the facts of this case. The most cogent evidence that will assist the court in ascertaining the mutual intention is evidence of an express agreement, orally or in writing, as to the proportions in which the beneficial interest is to be held by them.”. “Where there is no express agreement between the parties, the court will examine the conduct of the parties or their whole course of dealings prior to and up to the time of acquisition.” “It has long been established that the Court’s duty is not to adjust, override or re-allocate existing legal and equitable interest in disputed property in a manner it deems just and fair in the whole circumstances but to ascertain and give effect to ‘what is’.” “Only where there is evidence of an agreement by the parties to vary the beneficial interest obtained at the time of the property’s acquisition, is the Court permitted to give effect to any newly adopted position of variation of the beneficial interest.” (She relies on the judgment of McDonald-Bishop J in the case of ***Raymond Lincoln, Oliver Johnson v. Angela Eunice Johnson*** [2015] JMSC Civ).

- (ii) Both parties are registered as tenants-in-common, which creates a presumption of equal beneficial ownership. the burden lies on the claimant, Peggy Samuels, to prove that the beneficial interest differs from the legal. (She relies on ***Stack v Dowden*** [2007] 2 All E.R. 929,) The defendant maintains in his affidavit that, before and at the time of acquisition, the parties shared a common intention to own Lot 331

Drax Hall jointly and equally. The claimant, under cross examination denied any such intention, pointing to the defendant's lack of contribution to the deposit or initial payment. Despite her denial, the claimant made several admissions supporting the defendant's claim of equal beneficial entitlement. She admitted that the parties operated as a team, during the marriage and that the Drax Hall property was not their first joint business venture. In 2018 they jointly owned and operated a farm store in the Turks and Caicos Islands, held a joint business licence, and were joint signatories on the business account. She had also filed immigration documents for the defendant to reside with her there. Further, the Claimant admitted that in 2017 she and the defendant discussed and agreed to purchase property in Jamaica, and that the intended use was a business property. As the matter progressed, she wrote to the Defendant by email in 2017: "Praise the lord. Please see the Agreement that was modified according to our request so we are moving forward...as planned".

- (iii) In light of the foregoing, the parties had a common intention to acquire Lot 331 Drax Hall equally; and a common intention for the said property to be used for an Air B and B. The truth is further demonstrated in the claimant's explanation as to how the property was to be financed. It is important to note here that this explanation diverge in terms of their initial contribution, but the claimant's position was clear: "It was agreed that they would both pay the deposit, and both apply for a mortgage. The mortgage to be applied to cover the balance of the purchase price."
- (iv) Joint ownership with equal beneficial interest was the modus operandi of the parties, reflected not only in their Agro business in the Turks and Caicos Islands but also in the acquisition of Lot 331 Drax Hall. Despite differences in their accounts of how the property

was to be financed, both parties' explanations demonstrate that they operated together as a team. Further evidence of their common intention includes: the registration of the property in their joint names; the existence of two joint bank accounts, one in Jamaican dollars and one in U.S. dollars opened to facilitate the Airbnb business venture even before the property was identified; and • their conduct in financial and non-financial contributions toward the acquisition, improvement, and maintenance of Lot 331. The fact of the conveyance of Lot 331 in the joint names of the claimant and the defendant raises the presumption that the parties intended to hold equally. (She relies on the case of **Jennifer Johnson v. Horace Boswell** [2022] JMCA Civ. 32)

- (v) The claimant's explanation that the defendant's name was added to the title for convenience, to allow him to pay utilities in her absence from the island lacks credibility; given the claimant's admission that she was not inexperienced in property matters. as she had already acquired: matrimonial property, a second residential property in the Turks and Caicos Islands; and a jointly operated a farm store business in the Turks and Caicos Islands. The purchase was handled by experienced Attorneys-at-Law. If unequal interests were intended particularly given the alleged non-payment by the defendant, this could easily have been endorsed on the title with words such as "tenants-in-common in unequal shares." The absence of such an endorsement strengthens the presumption of equal ownership, and the claimant has provided no evidence of any trust arrangement to displace that presumption.
- (vi) As to whether the parties' common intention at the time of the property's acquisition invalidated by the later discovery that the defendant was still married; first of all, neither party knew that the defendant remained married when they "tied the knot," and there was

no pleading, no evidence showing that the defendant knowingly induced an unlawful marriage, concealed material facts, or misrepresented anything. Both believed they were legally free to marry. Second, there was no evidence that the claimant entered the union under duress, coercion, or without mental capacity to consent. There was no mistake as to the defendant's identity, the nature of the marriage, or the arrangement entered into. The parties had known each other even before his first marriage. Regarding the property, there was no mistake as to their common intention at acquisition. Both intended to acquire the property jointly for use as an Airbnb and acted on that intention. In the absence of any actual fraud by the defendant which must be pleaded, particularized, and strictly proven and with no mistake touching the parties' shared.

(vii) Parties, honestly but mistakenly, try to reinterpret the past in self-exculpatory or vengeful terms" in the absence of evidence as to an agreement, either expressed or implied, between the parties to vary the original beneficial interest, as was clearly the intention of the parties at the time of the acquisition, the Court can do nothing else but give effect to what was the common intention of the parties" (She relies on the case of **Forrest v. Forrest** (1995) 48 WIR, 221)The hurt caused by the discovery of the defendant's previous marriage (and evidenced by the annulment) created so much hurt and pain for the claimant that she has now mistakenly asked the court to resolve this matter on which the parties had a clear and unambiguous understanding at the beginning. There is no evidence of an agreement or understanding, expressed or implied, between the parties, to indicate that the common intention, as to respective beneficial interests, had changed up to the date of their separation. Although the property is not the family home, the acquisition occurred within a marital union, and both parties operated as interdependent partners, not strangers in an arms-The defendant's contributions

were multifaceted, encompassing financial input, improvements, upkeep, management, and physical labour. It is not disputed that the claimant alone paid the deposit, and the defendant says this reflected their mutual understanding that she would cover that cost while he handled the retrofitting. Apart from mortgage payments, the claimant appears to have abandoned all interest in the property; it is difficult to see how a sole owner leaves the property entirely to someone with no alleged interest, remuneration, or with whom she shares no relations. The defendant maintains that the post-separation transfer was merely an effort to settle matters amicably in accordance with their original agreement and does not form part of their course of dealings. (She relied on the case of **Kernott** [2012] 1 AC 776,

Analysis

[48] Having reviewed all the cases presented by both counsel, for which I am grateful, I recognize that the authorities which I will highlight during this discussion, when read together, encapsulate all the legal principles, extracted from all the authorities presented, which are relevant to the issues under consideration. Having regard to the fact that both parties' names appear on the title of the subject properly, my initial point of discussion, which is raised by counsel for the defendant, is the presumption that equity follows the law. It is indeed a settled principle of law that they would be legal owners of the property in question. Bearing in mind also that the endorsement on the title is that they are "tenants in common with equal shares" the presumption is that they are both entitled to equal beneficial interests in the property. However, this presumption can be displaced by evidence of a contrary intention. The burden of rebutting the presumption rests on the party claiming that the intention was for the beneficial interest to be different from that of the legal interest.

[49] In the case of **Stack v Dowden**, Baroness Hale, at paragraph 68 articulated this principle as follows:

"The burden will therefore be on the person seeking to show that the parties intended their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon."

[50] In the instance, the claimant is the party contending that the entire beneficial interest in the property belongs to her. Consequently, the burden rests on her to prove on a balance of probabilities that there was a common understanding between the parties that she owns the entire beneficial interest in the property, and that the addition of the defendant's name to the title was not with an intention to vest any beneficial interest in the property, in him.

[51] Ms. Samuels asserts that it was based on her belief that Mr. Black was her husband that she added his name to the title in order to enable him to engage with the utility companies concerning the property. She also asserts that he was the person in charge of supervising workers with regards to agreed improvements to the property. Mr. Black denies that there was any such arrangement. He contends that the reason why his name appears on the title was for him to benefit as co-owner. He also contends that he is the person who has been managing the property and that he has expended over three million dollars of his personal funds to improve the property, and in the payment of mortgage.

[52] While not denying that he made no contribution to the deposit and while accepting that the claimant was the sole applicant for the mortgage loan to complete the payment of the purchase price, he asserts that this arrangement was agreed upon by the parties prior to purchase.

[53] The gist of his explanation for this arrangement is that the parties had agreed that in exchange for the claimant applying for the mortgage loan for the subject property in her sole name he would take out a mortgage in his sole name to build a family home in the future on land previously owned by him, for both of them.

[54] In the case of **Jones v Kernott [2012] 1 AC 776**, at paragraph 19, the court had its to say:

"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 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"

[55] Further at paragraph 51, the Court made the following pronouncements:

"Where a couple buys a place for cohabitation in their joint names without an express declaration of their beneficial interests, the presumption is that equity follows the law and they are joint tenants in law and equity. This presumption could be displaced by showing that the parties 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."

[56] It is to be noted that the aforementioned concerned properties in which the parties cohabited. Conversely, the property in the instant cases was not purchased for domestic purposes, neither is there any evidence that the parties cohabited in the subject property, as the consensus is that it was purchased for investment purposes.

[57] Nevertheless, in my view, the principle expounded upon in those cases can provide some useful guidance for the determination of the issue in the case at bar. That is, the principle of common intention is nonetheless relevant.

[58] I find support for this view in the case of **Marr v Collie** [2017] UKPC 17, which clearly demonstrates that the principle of common intention is not restricted to domestic property. In that case, at paragraph 49, the Privy Council expressed the view that:

*"The Board does not consider, therefore, that Laskar is authority for the proposition that the principle in *Stack v Dowden* (that a conveyance into joint names indicates legal and beneficial joint tenancy unless the contrary is proved) applies only in "the domestic consumer context". Where a property is bought in the joint names of cohabiting couple, even if that is as an investment, it does not follow inexorably that the "resulting trust solution" must provide the inevitable answer as to how its beneficial ownership is to be determined. Lord Neuberger did not intend to draw a strict line of demarcation between, on the one hand, the purchase of a family home and, on the other, the acquisition of a so-called investment property in whatever circumstances that took place. It is entirely conceivable that partners in a relationship would buy, as an*

investment, property which is conveyed into their joint names with the intention that the beneficial ownership should be shared equally between them, even though they contributed in different shares to the purchase. Where there is evidence to support such a conclusion, it would be both illogical and wrong to impose the resulting trust solution on the subsequent distribution of the property.”

[59] In the case of **Stack v Dowden** at paragraph 69, the court stated that:

“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 money; 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.”

[60] At paragraph 70, the court made the point that:

“This is not, of course, an exhaustive list. There may also be There may also be reason to conclude that, whatever the parties’ intentions at the outset, these have now changed”.

[61] In the instant case Ms. Samuels, admits that herself and Mr. Black did discuss owning a home and that they both agreed to purchase property in Jamaica. She also

admits that initially she contemplated putting Mr. Black's name on the title to the property. This she says was subject to him contributing to the purchase price. It is evidence that the defendant having failed to contribute to the deposit or the closing cost she decided to purchase the property in her sole name. She insists that she was thereafter persuaded by the defendant to add his name to the property for the convenience of allowing him to manage issues relating to utilities and agreed to improvement to the property. Mr. Black denies that there was any such agreement in the terms asserted by Ms. Samuels.

[62] This court notes that there is no formal document which encapsulates the terms that are now being alleged by either party. In the case of *Jones versus Kernott* at paragraph 14 the court stated that:

"It was also accepted that the parties' common intentions might change over time, producing what Lord Hoffmann referred to in the course of argument as an "ambulatory' constructive trust": Lady Hale, at para 62. An example, given in para 70, was where one party had financed or constructed an extension or major improvement to the property, so that what they had now was different from what they had first acquired. But of course there are other examples. The principal question in this case is whether this is one

[63] And further at paragraph 51, the court stated that:

*"Their common intention is to be deduced objectively from their conduct: "the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party" (Lord Diplock in *Gissing v Gissing* [1971] AC 886, 906). Examples of the sort of evidence which might be relevant to drawing such inferences are given in *Stack v Dowden*, at para 69."*

[64] Consequently, in approaching the evidence in the instant case, I commence with the presumption that each party whose name is endorsed on the title as tenant in common with equal shares hold both the legal and beneficial interest in equal shares. I will then proceed to conduct an objective examination of the evidence to determine if there was a contrary intention of the parties as is alleged by the claimant Ms. Samuels. In view of the afore mentioned case law, the existence of a common intention and the terms of that common intention can be gleaned from the initial and subsequent conduct of the parties.

[65] In light of the conflicting positions presented by the parties, credibility is crucial to the resolution of the issues in this case. The defendant in his case has not denied that he did not contribute to the deposit or any of the initial cost of the purchase. He has also admitted that the loan application for the balance of the purchase price was indeed made only by Ms. Samuels. This is consistent with the evidence of Ms. Samuels supported by her letter in December 2017 instructing a Mr. Ellis of The Victoria Mutual Building Society to add Mr. Black's name to the Mortgage Deed as co-owner of the property. This is also supported by the pre-qualification letter from the Victoria Mutual Building Society which was addressed to her only. I consider this to be strong evidence in support of Ms. Samuel's contention that she intended to purchase the property in her sole name as she did not receive any money from the defendant to contribute towards the deposit. I form this view in spite of Mr. Black's insistence that it was always the intention for his name to be added to the title to the property, and that his lack of contribution to the deposit or none involvement in the loan application was based on the mutual understanding that he would be solely responsible for a future loan application for a family home.

[66] In his rebuttal of Ms. Samuels's allegations that she had at some point formed the intention to purchase the property in her name only, Mr. Black relies on the undisputed evidence of both parties that prior to the purchase of the house in 2018, they opened two joint accounts. a Jamaican and a USD \$ account to facilitate payment from the rental of the property. However, in my view the creation of these two joint accounts does not detract from Ms. Samuel's contention that, leading up to the time of purchase, Mr. Black had not contributed to the deposit and closing costs so that she by then held the intention to purchase the property in her sole name. Mr. Black has admitted on cross-examination that up to the time of the purchase of the property he had not lodged any money into the joint accounts.

[67] Additionally, I find that her email correspondence to him in June 2017 indicating that they were moving forward with the purchase, contrary to Ms. Powell-Francis' submission, does not invalidate this view. This is so., as evidence of the process commenced with the prequalification letter on May 24 ,2017. Consequently, June was still

early days yet in the process for her to continue to hold the expectation that Mr. Black would make some financial contribution to the deposit and closing cost.

[68] Accordingly, Ms. Samuel's evidence that she expected Mr. Black to contribute to the deposit, but because this anticipated contribution had not materialized, her intention shifted to buying the house in her sole name has not been contradicted by the parties having joint accounts prior to the purchase. I also examined this against the background that each also maintained individual accounts and there is no clear evidence that they pooled personal funds.

[69] Ms. Samuels has in fact admitted that there was another business venture involving farm supplies which she entered into with the defendant and that they held a joint account for this business. Counsel, Ms. Powell Francis has submitted that this admission supports the defendant 's claim of equal beneficial entitlement in the subject property. However, I do not subscribe to counsel's view. Contrary to counsel's submission that joint ownership with equal beneficial interest was the modus operandi of the parties, as reflected in the operation of that business, I see nothing in the evidence of either party, that establishes as a fact or inescapable inference that the agricultural business was operated on equal beneficial interest. First and foremost, no details have been provided as to how that business was financed. That is whether Ms. Samuels had taken on the sole responsibility for the initial cost with no contribution or expected contribution to those costs from the defendant but nonetheless, shared interest in that business equally with the defendant.

[70] If this were so, then this could have established a consistent pattern as to how the parties consistently dealt with their financial affairs. However, emerging from the uncontested evidence is that the parties maintained individual accounts for their personal funds. Mr. Black, on his evidence, maintained at least three of these, two at the Victoria Mutual Building Society and one at the Jamaica Money Market Brokers (JMMB) The two joints accounts that are held at VMBS, a USD\$ dollar account and a local account he shares with another individual.

[71] Additionally, on cross examination Ms. Samuels indicates that she purchased a property in Turks Caicos Island, to which defendant requested her to add his name to the title, but she refused. This has not been refuted. She also mentioned loaning money to the defendant. While admitting that Ms. Samuels did send money to him, Mr. Black has denied that these were loans. His evidence is that they usually assist each other when each was low on funds. There is in fact evidence that they both sent money to each other. However, when Ms. Samuels confronted Mr. Black in their private conversation via What's App about these loans, in his response to her Mr. Black did not deny this when he had the opportunity to do so. As such Ms. Samuels evidence on this issue appears to be more credible. As such I accept her evidence that during the course of their relationship she lent money to Mr. Black.

[72] Therefore, as it relates to their financial affairs, the indication on the evidence is that the parties did not routinely comingle their personal funds nor, did they necessarily share all the properties that they owned between them. Considering how they ordered their lives, the evidence indicates that they maintained boundaries in relation to their financial affairs. In relation to business ventures, I find that they treated each other as business partners with financial benefits being dependent on financial obligation, where loans were expected to be repaid. So, the mere fact of the parties previously operating a joint venture does not, without more, give rise on this occasion to an automatic conclusion that the parties were operating this investment home as a joint venture, without any financial contribution by one party.

[73] Having assessed the totality of evidence, as it relates to the credibility of the parties on this issue, Ms. Samuels impresses me as the more credible party. There is greater consistency on her evidence. I find her to be more forthright and her evidence to be more plausible than that of Mr. Black. I accept her evidence that the initial discussion was for both parties to contribute to the deposit. This is evidenced by the taking out of the accounts in their joint names in 2017 prior to the purchase. In fact, on the undisputed evidence both accounts were opened on the same day at the Victoria Mutual Building Society. I accept Ms. Samuels' evidence that sometime after the property was eventually found and prior to the completion of the purchase, she had reservations about adding the

defendant's name to the property as the defendant had not by then given her any money for the deposit. I accept her evidence that she later decided to add the defendant's name because based on a discussion between them, he convinced her that he would have been better able to assist her with the connection of the utilities or attending to the property on her behalf with his name being added to the title.

[74] I accept her evidence that she agreed to add his name to the title since she was unable to stay in Jamaica to get all these things done. I believe that she is being truthful when she states that she added his name in order to allow him to manage the stated matters in relation to the property because she believed he was her husband and believed that he would be trustworthy and that she would not have done it if they were not married.

[75] I find that the prequalification correspondence from VMBS that was addressed to Ms. Samuels and her the subsequent correspondence in December 2017 authorizing Mr. Black's name be added to the mortgage deed as a co-owner to be indication that up to December 2017, Mr. Black was not a part of the negotiations with VMBS and that Ms Samuel's instruction to add his name came much later in the process. That is approximately one month after the transfer was signed by both parties on the 27th of November 2017. The date of the mortgage deed is the 3rd of January 2018. These I find lend credence to Ms. Samuel's evidence that she had decided to purchase the property in her name alone until she was convinced to do otherwise by the defendant.

[76] On the issue of the common intention, I find Mr. Black's evidence to be lacking in credibility. While it is undeniable that he did make some payment towards the mortgage, this in and of itself does not point to the absence of the common intention that the entire beneficial interest in the property belonged to the claimant. As was stated in the case of **Stack v Dowden**, "*context is everything. The domestic context is very different from the commercial world. Factors more than financial contributions may be relevant to divining the parties' true intentions*".

[77] There is an apparent contradiction on Mr. Black's evidence in relation to the basis for the alleged agreement that Ms. Samuel should be the sole applicant for the mortgage loan. He has stated that it was understood that he would have needed to borrow

approximately forty million dollars (\$40,000,000.00) for the expenditure to construct the family home on land he owned. He however, went on to say that, 'they did not plan to live together in Jamaica at the time because of the church's view on remarriage, so they discussed living elsewhere for the time being, that is, in the United Kingdom or Canada and that they would have shared a family home in Jamaica eventually.' The fact that Mr. Black has admitted that the parties were discussing living outside of Jamaica and his indication that the acquisition of a family home in Jamaica would occur "eventually" is an indication that there was no settled agreement by the parties to share a family home in Jamaica.

[78] Additionally, it is quite incomprehensible how they would have arrived at a projected cost of \$40,000,000 when there was no agreed or projected timeline for the construction of this family home. This, in my view, points to a lack of credibility on the part of Mr. Black. It nonetheless supports the claimant's contention that there was no agreement for her to be the sole applicant for the loan for the subject property so as to facilitate Mr. Black being the sole applicant for a mortgage to construct a family home

[79] Moreover, Mr. Black has not refuted Ms. Samuel's assertions that in adding his name to the title of the property she was acting under the impression that they were lawfully married and that if she knew they were not married his name would not have been added to the property. Furthermore, her unchallenged evidence is that having discovered that her marriage to Mr. Black was not valid and having received the annulment of that marriage in 2020 she did not want to remarry him. In fact, on his own evidence, Mr. Black asserts that once Ms. Samuels discovered that they were not legally married she wanted nothing to do with him and commenced discussing ownership of the property.

[80] He cannot therefore, deny that any joint financial arrangement she would have entered into with him in relation to this property was based on her belief in the validity of their marriage. Mr. Black's evidence is that the discussion, centred around the division of the property, commenced in 2019 when he told Ms. Samuels about the status of his first marriage.

[81] However, Ms. Samuels has presented compelling evidence repudiating these assertions. These are a letter addressed to Victoria Mutual Building Society, in the names of both parties, signed by Mr. Black; What AP messages and Email correspondence between Ms. Samuels and Mr. Black. The letter is undated but reads as follows:

*"Victoria Mutual Building Society
Duke Street
Kingston*

"Dear Sirs,

We, PEGGY SAMUELS and PAUL BLACK, do hereby, authorize you to forward to our Attorneys at law, Nunes Scholefield DeLeon and Co., for the attention of Mr. Alexander Cools-Lartigue the Duplicate Certificate of Title Registered at Volume 1491, Folio 879 together with any other relevant documents, to enable our said Attorneys to register a Transfer subject to mortgage from PAUL BLACK to PEGGY SAMUELS.

Yours sincerely

.....
(unsigned, my insertion)
Peggy Samuels

..... **** ..
*(has Mr. Black's signature... * ***. My insertion)*
Paul Black

[82] The relevant WhatsApp Correspondence are as follows:

Miss Samuels to Mr. Black:

"I guess you don't mind destroying whatever reputation you have left and destroying the Apostolic Church. How you can walk in the pulpit to preach I pray that God send Nathan to condemn this action. Almighty God will defend me"

Mr. Black, Ms. Samuels:

No one is taking any house from you.

Ms. Samuels to Mr. Black:

"Then why would you send a letter to stop the transfer. You know I only put your name on the house after I got the mortgage because I thought we were married and I asked you I to turn on the light and water and you said you have no authority to put on the light because I didn't put your name on the house. You told me to put your name on it and I trusted you. And this is what you are doing to me. Trying to steal my house after all I have done for you. That's wickedness and God don't like unfairness. Many times you tell me you have to travel to the USA or back to Jamaica and I didn't have the money for the tickets and I use the last I have and use my miles from American Airlines or JetBlue so you could go. And this is how you will repay me It's wickedness Paul"

Mr. Black to Ms. Samuels:

"The house is yours. Stop worrying yourself"

Ms. Samuels to Mr. Black

Then why would you go get a lawyer to stop the transfer process that's wicked".

Mr. Black to Ms Samuels

"did you put the money on my account?

[Then why would you go get a lawyer to [stop the transfer]

So that you don't put me out on the street. After all

Ms Samuels to Mr. Black;

"you are so selfish When I used to send you thousands and hundreds and buy all your tickets. You took it all and repaid me nothing. You owe me thousands from the farm store in Douglas Castle. Thousands from a loan for your different vehicles. But you soooo (sic) selfish you pay nothing back but as soon as you spend a dollar you want to take me to court for it your wickedness knows no bounds.

Mr Black to Ms. Samuels:

"I am not taking you to no court stop the nonsense"

Ms. Samuels to Mr. Black

"What is this legal action then. As soon as you get a lawyer Is court. But God will defend me".

Mr. Black to Ms. Samuel.

"Get some rest and stop the nonsense"

[83] The relevant email is dated April 25th 2020. In this e-mail Mr. Black is writing to Ms. Samuels. It reads:

"Greetings Sister Peggy<

I'm nesting you(sic) to know the house is yours. I was just see (sic) what you would do and how far you would go. I want to explain to you why I didn't sign the documents at the lawyer's office but I will do so. Please let me explain to you what has happened, forgive me if I made you upset

Peace and God Bless You,

Paul".

[84] Mr. Black has not denied these WhatsApp and the e-mail correspondence between himself and Ms. Samuels. He has also not denied that it is his signature on the letter to Victoria Mutual Building Society. In spite of the fact that the letter signed by Mr. Black and the WhatsApp messages are undated, the content of the email sent by Mr. Black on the 25th of April 2020 give rise to the inescapable inference that the WhatsApp messages and

the letter addressed to VMBS predate this email correspondence. However, in examining this correspondence, the fundamental fact is that Mr. Black is not only admitting to Ms. Samuels that the house belongs to her, but also, in signing the letter addressed to Victoria Mutual Building Society, he demonstrated that he was amenable to having the entire beneficial interest transferred to her.

[85] In his evidence he has proffered an explanation for the apparent contradiction between these correspondences and his assertions that he has a 50% interest in the property. However, I find his explanation quite incredulous. In the WhatsApp correspondence he made no mention of the payment of any sum in exchange for his purported interest in the property. I have considered the fact that in the WhatsApp correspondence Mr. Black did ask Ms. Samuels if she lodged money in his account. Nonetheless he made no reference to this being payment for any interest in the property. I also examine this against the background that he admits that Ms. Samuels did send money to him prior to this when he was low on funds.

[86] In any event, it is revealed in Ms. Samuel's response in the same conversation that, this was in reference to specific expenditure by Mr. Black. That relevant response is noted below:

"But you soooo (sic) selfish you pay nothing back but as soon as you spend a dollar you want to take me to court for it"

[87] Moreover, his reservation with regards to proceeding with the transfer, as explained in his WhatsApp message was not based any assertion of proprietary rights. He was rather influenced by the fear that in the exercise of her right to ownership, Ms. Samuels would require him to give up occupation. That is "put him out on the street" in none of this correspondence with Ms. Samuels, when she was declaring and asserting her rights to full ownership of the subject property, using the expression "my house" did he seek to contradict her. Nowhere did he mention or even intimate joint, much more equal ownership. In fact, he did not even remain silent on the issue, but validated her claims by himself declaring "*the house is yours*"

[88] Furthermore, in his subsequent email correspondence to Ms. Samuels, Mr. Black mentioned nothing about him having any proprietary interest in the subject property, nor in there any indication of him requesting payment for any such interest. On the contrary, he again reassured her that the house was hers and that he was just testing her to see how far she would go, and assured her that he would sign the documents. I take it that by reference to “the documents” he meant documents relating to the transfer of the entire legal title to Ms. Samuels.

[89] Considering these discussions between the parties, it is manifested with absolute certainty that Mr. Black is being disingenuous when he states that Ms. Samuel’s “*I’s* *in relation to this property have only come about during the course of these proceedings*” Additionally I find that his evidence that when he advised the claimant of the status of his previous marriage, the claimant asked him to purchase her share of the property incredible. Equally incredulous is his evidence that the discussions went back and forth between them for some time until he decided to transfer his interest to her in exchange for “certain sums” and that it was when no payment was forthcoming from the claimant, he indicated that he would no longer be going through with the transaction.

[90] The fact is, the parties in the WhatsApp and email correspondence were communicating freely, away from the scrutiny, or influence of any 3rd party. As such, when Ms. Samuel’s accused Mr. Black of trying to steal her property, if there was any such discussion I would have expected to see those mentioned in Mr. Black’s response. But instead of a response asserting a claim to title Mr. Black unequivocally stated that the property belongs to Ms. Samuels.

[91] Mr. Black’s lack of candour is further reflected in his reference to his demand for payment of “a certain sum” in exchange for his alleged interest in the property. He failed to specify any particular sum of money discussed between himself and Ms. Samuels in his evidence in chief. It was only when he was pressed on cross examination that he mentioned any particular sum. This lack of clarity in my view indicates that Mr. Black is not being honest in this regard.

[92] As was correctly observed by, counsel for the defendant, citing the judgment of McDonald Bishop J (as she then was), in the case of **Raymond Lincoln, Oliver Johnson v. Angela Eunice Johnson** “*The most cogent evidence that will assist the court in ascertaining the mutual intention is evidence of an express agreement, orally or in writing, as to the proportions in which the beneficial interest is to be held by them*”

[93] However, while in the instant case there was no written document at the time of purchase, indicating a mutual intention, for the parties’ interest to be different from that indicated on the title, I disagree with counsel’s submissions that, if the court gives effect to expressions in these correspondence, this would be tantamount to, “*varying the beneficial interest from that obtained at the time of acquisition to newly adopted position without any consensus*”. In my view, in this correspondence the parties were communicating, in circumstances of privacy where there were no constraint to the free and frank communication, and I find that, that is exactly what they did. The exchanges between the party reflects a clear expression of their mutual understanding regarding the beneficial interest in the property at the time of purchase.

[94] Essentially, I share the view of counsel for the claimant, and determine that the aforementioned correspondences are evidence supporting Ms. Samuel’s claim that it was understood and agreed between herself and Mr. Black that the property was hers and that she only added his name to allow him to be able to deal with matters connected to the property, in the belief that he could trust him as her husband. Counsel for the defendant submits that the post-separation transfer was merely an effort to settle matters amicably in accordance with their original agreement. I find this to be true to the extent that no payment of sums to the defendant were ever discussed as a condition of him signing the transfer, as it was never a part of the mutual understanding that he would have an interest in the property. As such, I view his attempt to deviate from this arrangement as disingenuous and unconscionable. Furthermore, counsel for the defendant submits that the court should find that contributions on the part of the defendant were multifaceted, to include improvements, upkeep, management of the property and physical labour and that these contributions demonstrate that his conduct was that of a party with a beneficial interest in the property.

[95] However, contrary to this view, while I do not believe that the defendant acted out of altruism regarding any contribution, financial and otherwise in relation to subject property, his overall conduct was not in my view motivated by any understanding of him having any beneficial interest in the property, but rather the convenience and benefit of his occupation of the premises. This motivation was clearly expressed in his response to the claimant via the WhatsApp messages when he emphatically declared that the house was hers and then went on to explain that the reason why he changed his mind about signing the transfer was because he did not want her '*to put him out on the street*'. In this regards the defendant articulated his acknowledgment that as the true owner of the property, the claimant had the power to demand his vacation of the premises and that it was his fear of her exercising this power that caused him, to deviate from the original mutual understanding, to rescind his decision to sign the transfer of the entire beneficial interest to her.

[96] Another factor which I consider to be vital to this discussion is the time when Mr. Black chose to communicate the information to Ms. Samuels regarding the status of his first marriage. It is an established fact that the parties went through what was believed to be their marriage ceremony in 2015. Mr. Black's evidence is that in 2017 he discovered that up until 2017, he was still married to his previous wife. He states that he immediately communicated this to Ms. Samuels who applied for the marriage to be annulled.

[97] However, further on in his evidence in chief he states that it was in 2019 that he advised Mr. Samuel about the status of his marriage, and that they then started a discussion about the division of the property. In her evidence in chief, Ms. Samuels states that it was in 2018 that Mr. Black gave her the information about the status of his previous marriage but later stated on the cross-examination that she cannot recall the exact date he gave her this information. However, the evidence reflects that the parties executed the transfer in November 2017, and that both names were endorsed on the title in January 2018.

[98] Therefore, whether the information regarding the status of his previous marriage was conveyed by Mr. Black in 2018 or 2019, indubitably, from the evidence of both

parties, this information was conveyed by him to Ms. Samuels subsequent to the signing of the transfer by the parties.

[99] Having examined the relevant documents presented by the parties, they indicate that processes involving the purchase of the property actively commenced by the latest May 24, 2017, as indicated by the pre-qualification letter from Victoria Mutual Building Society addressed to Ms. Samuels. Mr. Black has not indicated the precise date in 2017 when he became aware that he was still married when he purported to marry Ms. Samuels. However, he was evidently, privy to this information prior to the completion of the process to transfer the property in both their names. Up to this point he admits he had made no contribution to the purchase, whether directly or indirectly.

[100] Moreover, up to this point he was well aware that the only basis on which his name was being added was because the claimant believed that she was in a lawful marriage with him. Therefore, sometime in 2017, and prior to the completion of the conveyance of the property to him as joint owner with the claimant, Mr. Black would have been aware of Ms. Samuel's fundamental mistake of fact, influencing her decision, yet he did nothing to correct this mistake until after the process was complete. To my mind, this conduct on the part of Mr. Black was less than fortnight.

[101] Nonetheless, I find that the very substrata of the joint enterprise, which Mr. Black purports to exist, have been (i) illusory and (ii) eroded. It has already been established that the marriage lacked legitimacy. This is a fact that Mr. Black discovered before the process of the addition of his name to the title was completed. Secondly, even if I were to accept his version, that his name was added in contemplation of he alone financing a family home for the parties, it is evident that this contingency, never materialized.

[102] Additionally, his evidence in cross examination that he sold the land on which the house was to be built, which was bought "in his sister's name," and used some of the proceeds to improve the subject property, and pay some of the mortgage, lacks credibility. Firstly, this evidence was never mentioned in any of his affidavit evidence. This is, in circumstances where in his affidavit evidence he provides a figure for the sum of money he allegedly paid into the mortgage account, and the existence of this "agreement"

regarding the family home was introduced into evidence by him. As such if he did apply some of the proceeds from the sale of that land towards improving the subject property as well as payment towards the mortgage I would have expected him to include this crucial piece of information in his affidavits. He has offered no explanation for this omission.

[103] Secondly, Mr. Black claims to have expended this sum of 4 million dollars in 2020 and 2022 for plumbing and titling work on the property and in mortgage payment. However, this evidence is totally inconsistent with Mr. Black's evidence in chief. In his evidence in chief the only work he mentions in connection with the house in 2020 is the installation of a camera.

[104] I note that Mr. Black has produced several receipts for 2020. Some of these are for the purchase of items, which appear to have some connection with plumbing and tiling, though there is no supporting evidence to confirm that these materials were actually installed at the subject property. These are 1 bag of grout, 3 bags of tin set, toilet, angle valve bowl wax and screw. The total purchase price for these was \$13,534. There were other receipts for items purchased in 2020, These were for concrete primer, roller paint and spray waggon, masking tape, and paint. The total of all these receipts to include those for the plumbing and tiling items amounts to \$26,512.36. The total mortgage Mr. Black alleges that he paid in 2020 is \$1,643.66USD. Applying an exchange rate of 142 to 1 this amounts to \$233,000. The total mortgage he claimed to have paid in 2022 is \$4414.95. Applying an exchange rate of 153.43, this amounts to \$677,385.77.

[105] So, when one adds this to the total of the receipts produced for 2020 one arrives at a total of \$936,898.22. Mr. Black also alleges that he used some of the proceeds to add the storeroom /bathroom to the property. This he said was done using temporary material. Despite exhibiting several receipts for construction materials, he has not provided a total costing for this construction. The receipts for construction material purchased in 2022 to include purchase for angle valves, paint, tin set, grout, screw, zinc, door, steel, paint toilet valves, adapter pipes, cement, lumber, nails, screws, plywood, gutter, stones, and blocks, on my calculation amount to \$ \$1,072,120.41. When this is

added to the sum of \$936,898.22 the sum total is \$2,009,018.63. This figure is evidently far below the \$4,000,000.

[106] Therefore, I reject Mr. Black's evidence that he expended a portion of the proceeds from the sale of his land for the payment of mortgage or otherwise in the improvement of the subject property. Notwithstanding, I find that Mr. Black's insistence on the existence and enforcement of a joint enterprise in circumstances where he did not contribute to the deposit or closing cost, in the face of the illegitimacy of the marriage and the failure of the commitment on which he staked the purported joint enterprise, quite inexplicable.

[107] Nevertheless, I find that Ms Samuels has proven to me on a balance of probabilities that there was a common understanding between the parties that the entire beneficial interest in the subject property belongs to her. She has proven that she only added Mr. Black's name to the title because she believed in the validity of the marriage and she trusted him to carry out necessary activities in relation to the property in her absence. Consequently, I hold that Mr. Black hold no proprietary interest in the subject property and Ms. Samuels is entitled to the sole beneficial interest in the property.

Whether the Defendant is entitled to be refunded mortgage payments

The Evidence of the Claimant

[108] On this issue the evidence of Ms. Samuels is that:

As soon as she got possession of the property, she rented out the 2 bedroom 1-bathroom side of the house. She left some money in a joint account in order to build a fence around the property and to build a kitchenette, as she wanted to rent the property as an Air BnB to generate an income to assist her with the payment of the mortgage. The defendant was in charge of the workman. He did not properly supervise the workman, and the kitchenette was constructed too close to the boundary and so will need to be demolished. Their initial agreement was that if the defendant occupied any portion of the property, he was to pay US\$350.00 per month. This sum was rent, and he was to pay it into the mortgage account. As soon as she got the keys, the defendant moved into the house. He occupied the whole property for a short period of time.

[109] She also states that:

They agreed that when the 1-bedroom side was finished, the defendant would move there and continue to pay the USD350.00 per month. She intended to send money to pay the monthly maintenance (strata) fees and to pay the gardener. The Defendant did not pay the US\$350.00 per month into the mortgage account. Paying the maintenance and the gardener was much less money than the defendant alleges. The defendant has taken the monthly rent and against her wishes he has used it to fund his living expenses. She do not doubt that he used the rent to pay the monthly maintenance and property taxes. The defendant had access to the rent and used the rent as he saw fit while she was forced to send money to pay the mortgage.

[110] She contends that;

She sent money to the defendant to purchase a queen size bedroom set, a stove, refrigerator and microwave for the property. It was purchased before she arrived in Jamaica. This was the first time she was returning after the close of the sale. She stayed in the property on the furniture that her money purchased. This was separate from the money she left in the account. She was having serious financial challenges and could not keep paying the full mortgage. She told the defendant that he would have to vacate the property so that it could be fully rented out as he had refused to.

[111] She asserts that;

She tried to rent the property, but the defendant does not want her to have any communication with the tenants as he wants the rent to be paid to him so that he is not accountable for it. She tried to take control of the rental, but she is blocked by the defendant. Whenever the property is vacant and she secure a prospective tenant, the defendant does all that is possible to ensure that he controls the rent.

[112] She says that:

The defendant was opposed to her plan for short term rentals because he was living at the property and did not want to give up the 1 bedroom or relinquish control of the rental. The defendant needs to account for all the rental received by providing a transaction history of United States Dollars savings account ending in 54 at Jamaica Money Market Brokers, Ocho Rios Branch. This is the account into which some of the rent was paid. The rent was also paid into a Jamaican dollar account. She would also like the transaction history of that account. The defendant paid USD2,020.00 from his pocket.

She sent money regularly for the mortgage through VM Money Transfer, MoneyGram and Xoom. The payments she made are reflected in the mortgage account.

[113] On cross examination her evidence is as follows:

*She agrees that the rental of property Lot 331 was supposed to be used for the mortgage. She agrees that the property was not always rented. She cannot give a specific date in answer to whether it is true that between February 2018 and October 2018 and between March 2019 and June 2019 the property was not rented. She cannot remember all the specific dates when the property was not rented. She denies not knowing when the property was rented. She is not sure if between February 2018 and November 2024 there were long periods during which this property was not rented. She is not sure if the first time that the payments of the rent was the same as the mortgage was in June 2023. It was not Mr. Black, who was responsible for the rental of the property. She placed one tenant, Gordon, in the property in November 2022. She agrees Ms. Gordon never occupied the property. She disagrees that this was because the development did not allow short term rental, and says the defendant stopped the process. She disagrees that the defendant paid the sums of **US \$2,520 in 2018; USD \$2873 in 2019; USD \$1,643.66 in 2020; USD \$4,414.99 in 2022, USD \$4,873. 66 in 2023, and USD USD \$4,190.00 in 2024** towards the mortgage from his personal funds*

The Evidence of the Defendant

[114] On this issue the following is the evidence of the defendant Mr. Black:

In 2018 when the property was acquired it consisted of three (3) bedrooms and two (2) bathrooms with the kitchen, dining and living rooms occupying in a single open space. Given, their initial intention to utilize the property for an Air BnB he and the claimant agreed that a kitchenette would be added to the master bedroom which already had its own bathroom, and this completed section would serve as a one-bedroom flat. The remaining two bedrooms with existing bathrooms, kitchen, living and dining rooms would serve as a two-bedroom flat.

[115] He contends that:

He has been solely responsible for the property's rental and for the monthly collection of rent. That to secure tenants he entered into a Rental Listing Agreement with Valrie Levy and Associated Ltd. in 2019 and at other times he placed notices for the property's rental on the community notice board. He realized after taking possession that the Homeowner Rules and Regulations prevented this usage which is described as short-term rental and as a trade or business. He was not always able to secure long term rentals for the said property and so: the property was not always rented; and prior to June 2023, whenever it was rented, the monthly rental was never enough to cover the cost of a monthly mortgage. In either instance he contributed to the mortgage payment(s).

[116] He mentions that:

The property remained unoccupied between February 2018 and October 2018. During the period, I paid from my own pocket the sum of Two Thousand and Twenty United States Dollars (US\$2,020) towards the mortgage. (mine here of 9 months he only paid 2) In November 2018, he rented the unfurnished 2-bedroom flat on a long-term basis for USD\$550.00 per month. However, after payment of the deposit and first month's rent, the tenant could not continue payment and he was forced to serve a Notice to Quit. Whilst she vacated the said property in February 2019, she paid no rent for the months of January 2019 and February 2019. During the year 2018, he paid a total of two Thousand Five Hundred and Twenty United States Dollars (US\$2,520.00) towards the mortgage from his pocket. Between March 2019 and June 2019, the said property remained untenanted and still without income from January 2019. He rented the 1-bedroom flat from July 2019 – September 2019 at a monthly rental of Fifty Thousand Jamaica Dollars (J\$50,000.00). This tenant vacated the said premises in October 2019. He rented the 2-bedroom flat in August 2019 and September 2019 for a monthly rental of Seventy-five Thousand Dollars (JD\$75,000.00). Although this should have been a long-term rental, it lasted for only this period because the tenant had been taking steps to sublet the property on a short-term basis. The property remained untenanted from October 2019 until July 2020. During the period 2019, I paid Two Thousand Eight Hundred and Seventy-Three United States Dollars (US\$2,873.00) towards the mortgage from his own pocket. During the period 2020, he paid One Thousand Six Hundred and Seventy-three United States Dollars (US\$1,643.66) towards the mortgage from his pocket. From August 2020 until February 2022 only the 2-bedroom flat was rented. Between August 2020 and January 2021, it was rented at a cost of Jamaican Eighty Thousand Dollars (JA\$80,000.00) per month – a total of Four Hundred and Eighty Thousand Jamaican Dollars (JA\$480,000.00) for that period.

[117] He states that:

February 2021 to February 2022 the 2-bedroom flat was rented for Ninety Thousand Jamaica Dollars (JA\$90,000.00) per month. In 2022, the 2-bedroom flat was rented only for the months of January 2022 and February 2022. The property remained untenant from March 2022 – November 2022. During the year 2022, he paid Four Thousand Four Hundred Fourteen dollars and Ninety-five Cents United States Dollars (US\$4,414.95) towards the mortgage from his pocket. In January 2023 the mortgage increased to United States One Thousand Two Hundred Dollars (USD\$1,200.00). The property remained untenant for January 2023 and a portion of February 2023. In February 22, 2023 the property was rented until March 21, 2023. This rental was expected to last for one year, however the tenants broke the agreement and moved out of the property. That there were no tenants in the said property in April 2023 nor May 2023. From June 2023 until May 2024 the property was rented through Remax Elite Realty for USD\$1,200.00 per month. During the period 2023, he paid Four Thousand Eight Hundred Seven Three Thousand United States Dollars and sixty-six Cents US\$4,873.66 towards the mortgage from his pocket. The property was untenant between June 2024 and November 2024. The property was rented for the month of December 2024 for US\$1,200.00. During the period 2024, He paid US\$4,190.00 towards the mortgage from my own resources.

[118] Mr. Black asserts all the sums he collected as rental income were paid towards the mortgage; they were deposited into his local account at V.M.B.S. and then transferred directly to the mortgage account at the bank's exchange rate. He further asserts that the agreement was for him to collect the rent and deposit it to the mortgage account and that that there was no agreement for tenants to pay directly to this account. He states that there was never an agreement between the claimant and himself for him to pay rent as at the time they acquired the property, they agreed that the 2-bedroom section of the property would be retrofitted for use as an Air BnB; the third bedroom room would be furnished and left for their use – which meant that the claimant would stay there whenever she was in Jamaica.

[119] He says that in or around 2019 when they had a challenge securing long term rentals, they discussed rental of this one bedroom and when a third party expressed an interest in renting only one bedroom, he advised the claimant that they should rent this room for US\$350.00 per month, that is approximately JMD\$50,000.00. He indicates that

it was following this discussion that the one-bedroom section was rented from July 2019 – August 2019 for Fifty Thousand Dollars (\$50,000.00)

[120] He mentions that all the rental income paid in Jamaican Dollars between July 2019 and February 2022 were deposited into his local account, from there to their joint United States Dollars account, and then to the mortgage account, if no refund had to be made to tenants.

[121] On cross examination he states that:

He occupied the entire property for about 2 ½ years. He was not paying rent to Ms. Samuels. There was a suggestion by her, for him to make a monthly payment of USD\$350 but it was not his understanding that he was renting the property. She made that suggestion. He did not agree to that suggestion. That came after he informed her of the marriage situation. He did not agree to pay rent. The portion of the property he now occupies is the 1-bedroom section of it after he retrofitted the three bedrooms. He added a storeroom/bedroom and bathroom to the kitchenette. The bathroom and bedroom are made of sheet rock. He informed Mrs. Samuels about the construction of the storeroom, but he did not require her permission. He agrees that Mrs. Samuels did not want him living in the storeroom, nor did she want him living on the property at all.

[122] He states further that:

In 2019 only one section of the house was available for rental, and that section consisted of a two-bedroom unit. In 2020, the same two-bedroom section was available for rent, while he himself lived in the one-bedroom section. The situation remained unchanged in 2021. In 2022 the entire house was rented. Renovation work had been done, resulting in all three bedrooms being made available for rental. During this time, he occupied the bedroom which he describes as storeroom, kitchenette and bathroom, which he described as having been constructed with cement board. He continues living there while the three-bedroom portion was rented. For 2023, the three-bedroom section was rented. In 2024, the property was rented only for a short period during the year.

[123] Mr. Black says that; when rent was collected, it was either deposited directly into the mortgage account or deposited into his U.S. account and then transferred to the mortgage account; he received rent in cash from tenants. He identifies entries in the

mortgage account that represents rent payments he had lodged. He points out several deposits between 2018 and 2023 noting that some deposits were not exclusively rental income but included additional payments he made toward the mortgage.

[124] He confirmed that all deposits up to December 2024 that he identified were rental deposits. He also acknowledged the notation that the total highlighted payments amounted to over USD \$49,000, which included rental income.

[125] Mr. Black was shown the lease agreement exhibited to his affidavit, which stated that rent was to be paid into a JMMB account ending in 754. He acknowledges the clause but admits he did not exhibit the transaction history for that account and states that the tenant, Mr. N, did not pay rent into that account. He explained that Mr. N had difficulties with the account.

[126] He confirmed that rent received on March 11, 2024, was lodged to the VMBS account. When confronted with his earlier statement that the last rental deposit for 2024 occurred on January he retracted stating that some deposits exceeded the rental amounts because he also made additional mortgage payments.

[127] He acknowledges receiving USD \$1,200 on April 11, 2024. This he says was deposited in the same month. He also confirms receiving USD \$1,200 on February 11, 2024. He says all amounts collected from Mr. N were lodged into the U.S. mortgage account and that during Mr. N's tenancy, there were no other tenants. He agrees that according to the lease agreement, Mr. N's tenancy commenced on June 11, 2023. He indicates that Mr. N occupied the entire three-bedroom portion of the house, as the section had been converted back from two separate units into a three-bedroom, two-bathroom space while, he himself continues to live in the storeroom/ bedroom kitchenette and bathroom.

Submissions

On behalf of the Claimant

[128] Counsel Ms. Batchelor submits that:

- (i) The defendant has provided figures for the mortgage contributions in his first affidavit. These the claimant disputes. The defendant contradicted himself regarding his payment of the mortgage. In his first affidavit he claimed to have paid less than USD20,000.00 in total toward the mortgage, yet in his second affidavit where he highlighted payments in the transaction history for the mortgage account ending in 142 he claimed in his own handwriting that he had paid USD49,095.23. In cross examination, he was forced to admit that the USD49,095.23 figure included rent payments, not just mortgage contributions.
- (ii) The rent that the defendant has admitted was paid, these payments were not always reflected in the mortgage account, and he was unable to show the Court where the rent was reflected in the account. During cross-examination the last rent he stated he received was in January 2024, but when confronted with receipts, he had to capitulate. The defendant occupied most of the property in 2019, then moved into the one-bedroom at the end of that year and occupied there until 2022. Based on his own evidence during cross-examination, his benefit can be calculated: 11 months in 2019 + 24 months in 2020 and 2021 = 35 months at \$50,000.00, totalling \$1,750,000.00. For 2023 and 2024, at \$70,000.00 per month, the total is \$1,680,000.00. For a total of \$3,430,000.00, which is more than what he paid for the gardener and the monthly strata maintenance.

On behalf of the Defendants

[129] Counsel for the defendant submit as follows:

- (i) Short-term rentals were not permitted under Property Owners Management Agreement (POMA). During vacancies or when rent was below the mortgage amount, any payments the defendant made from his own resources should also be credited to him. The best indicator of contributions is the US\$ mortgage account exhibited by both parties. The claimant's payments (via Zoom, VM Money Transfer, etc.) appear clearly in this account.
- (ii) The account shows that the defendant previously understated his payments; the bank's records place his actual contribution at US\$24,732.89 rather than US\$20,515.2 At no time was Lot 331 unrented nor its full income potential unrealized because of the defendant's occupation. This lacuna existed because short-term rentals, as originally intended, were not allowed. Whilst contending that this is the case, the claimant has failed to provide evidence of a single prospective tenant who did not rent because the defendant was in residence. At the highest point, this contention is therefore an unsubstantiated theory which loses all credence generally, when one realizes that the rental landscape in Jamaica, with owners and tenants sharing rental properties, is a common phenomenon; and specifically, when it is seen that the defendant remained in residence alongside tenants when the entire property was rented.

Discussion

[130] In his evidence Mr. Black has alleged that between 2018 and 2024, with the exception of the year 2021, he has paid moneys from his personal funds towards the mortgage for the property. These sums total \$20,515 .31 USD. Ms. Samuels is contesting Mr. Black's assertion that this sum came from his personal funds. However,

there is evidence of payment of sums either by direct deposits or transfer from USD account, and two local accounts associated with Mr. Black into the USD joint account held in the names of both parties from which the mortgage payment is transferred by VMBS into the mortgage account.

[131] In relation to the other accounts associated with Mr. Black, two are held at the Victoria Mutual Building Society and one at the Jamaica Money Market Brokers. (JMMB). Ms. Samuels contends that the United States Dollar (USD) account was opened for the tenants to pay the rent directly into this account. She alleges that because the defendant had access to the rent, he has used it to fund his living expenses. She however admits to the defendant paying a portion of the mortgage. She first admits to him making three payments. Then, further, she states that for 2023 the defendant paid approximately USD800.00 toward the mortgage.

[132] In the case of ***Forrest v Forrest*** (1995) 32 JLR 128, Carey JA at page 136G-H stated that:

*“Once the interests of the parties are defined at the time of acquisition, it is my view that the unilateral action of one party cannot defeat or diminish the proportions in which the parties hold the property. The payment to redeem the mortgage cannot, therefore, diminish or increase the proportions in which the parties intended to hold at the time of acquisition. In the redemption of the mortgage the respondent must be regarded as having made a loan to the appellant to the extent of the proportion of his interest in the property. That amount is a debt recoverable on the order for accounts to be taken, made by the judge.” (See also paragraph 67 and 68 the case of ***Stewart v. Stewart*** [2013] JMCA Civ. 47 in which this principle was applied)*

[133] While it is indisputable that it was the defendant who assumed control over the rent and did have the opportunity to use it as he wished, he has produced, rental receipts and lease agreements from tenants to the property. On the contrary, Ms. Samuels has produced no solid evidence to demonstrate that Mr. Black had collected more rent than he has so indicated. In her submissions on the credibility of Mr. Black’s evidence on this issue, Ms. Cooper-Batchelor submits that there is contradiction on the evidence which affects his credibility. She takes the point that during cross-examination he states that the

last rent he received was in January 2024 but corrected this when “confronted with receipts”.

[134] However, I bear in mind that these receipts were submitted by the defendant. In my view, if he intended to disguise the fact that he collected rent for the period beyond January 2024, he would have refrained from exhibiting those. Counsel also takes the point that the payment of rents that the defendant admits that he received, were not always reflected in the mortgage account and he was unable to account for these. Counsel’s submission is particularly in reference to receipts dated February, March and April 11th, 2024. Each receipt reflects a payment of \$1,200USD. Mr. Black insists that these were paid but were included in larger sums as he was paying down the mortgage.

[135] When I examine the mortgage account there is in fact no reflection of payment of these specific sums on the dates reflected on the receipts. However, I observe that there was a deposit on the 27th of February 2024, of \$1400 USD which was in excess of the \$1200USD that was paid for rent on the 11th of February, 2024. On the 27th of March 2024 there was another deposit by bearer of \$1500, USD which again was in excess of the rent collected on the 11th of March 2024. On the 30th of April 2024 there was a deposit of \$1500USD which was in excess of the \$1200USD collected on the 11th of April 2024.

[136] In essence, while there are no lodgement reflecting the exact amounts collected on the dates reflected on the aforementioned receipts, exhibited by the defendant, I find that there is sufficient evidence of lodgements by him that can account for these sums. As such I do not agree with counsel for the claimant that he has not sufficiently accounted for all rent he admits to collecting.

[137] Counsel also points to the difference in sums between the amount the defendant states in his first affidavit that he paid towards the mortgage from his personal funds and the total sum of lodgements that he highlights on the exhibit as his total payment into the joint account. However, in my view there is no apparent conflict between these pieces of evidence, given the fact that in his first affidavit Mr. Black indicates that he made payments of the rent collected towards the mortgage and that he also indicates that he made payments from his personal funds. Essentially, it is clear to me that from the outset,

his evidence is that the total lodgement he made was above the figure stated in his first affidavit. In essence that figure in addition to the rent he received, was paid towards the mortgage. As such I do not share counsel's view that his evidence on this issue lacks credibility.

[138] On Mr. Black's evidence the sums he indicates that he paid into the mortgage account, from his personal fund amount to \$20,515 .31 USD. Counsel for the defendant, Ms. Powel –Francis submits that this sum is understated. However, I cannot accept counsel's submission, as evidence which has not come from the witness himself. Counsel did not seek to address this "understatement "while Mr. Black was in witness box, so as to give counsel for the claimant an opportunity to cross examine Mr. Black on the issue, bearing in mind the difference in the figures would have amounted to an inconsistency on his evidence.

[139] This is against the background that his credibility, with regards to the source of the sums, lodged in the joint account is being challenged. The contention being, that the total sum with the exception of three payments came from the rent he collected, some of which he has not account for, and not from his personal account. Additionally, this is also bearing in mind that Mr. Black admits that he co-mingled the rent with his personal funds in his account.

[140] Consequently, in focusing on the evidence presented, I treat any sum lodged by Mr. Black in excess of that which he asserts to be his personal funds as rent.

[141] The next issue I have to determine is whether Mr. Black is entitled to the refund of this sum. Both parties have agreed that this property was purchased for the purpose of investment. Having determined that the entire beneficial interest belongs to Ms. Samuels, it follows that the income from the property also belongs to her. Mr. Black has admitted that he has been residing on the property from 2018 until present, with the exception of a few months when he said he moved out due to work that was being done on the property. He has not denied that Ms. Samuels objected to him living on the property. In spite of his denial in his evidence in chief that she demanded that he pay a rental sum of USD\$350,

while in occupation, he admits on cross examination that she suggested it, but he did not agree to it. He has also admitted that she had asked him to vacate the premises.

[142] It is therefore apparent that there was no consensus between the parties for Mr. Black to occupy the property rent free. I accept the evidence of Ms. Samuels that she did not permit him to live rent free in her investment home. I accept her evidence that the initial agreement was that if the defendant occupied any portion of the property, he was to pay US\$350.00 per month. This sum was rent, and he was to pay it into the mortgage account. Up to December 2024 the defendant would have been living in the property for over 6 years rent free.

[143] I note the point raised by counsel for the defendant that the claimant has produced no evidence that the defendant's occupation prevented the property from being rented. However, in my view, while this may be so for the portion that he did not occupy, this cannot hold true for the portion of the property he himself occupied. While he would be deriving a benefit from occupying the property rent free, his occupation of all or part of the premises deprived the claimant of earning an income from the part of the property he occupies.

[144] That being the case, the submission of counsel Ms. Cooper-Batchelor accords with my own view that Mr. Black's occupation of Ms. Samuel's investment property should be taken into account in the determination of any compensation that falls due to him. When I calculate the total sum he should have paid for the 6years at 350 USD per month I arrive at a total of \$25,200USD which is obviously in excess of the sum the defendant paid into the mortgage account from his personal funds. Consequently, I find that the defendant is not entitled to the return of any sums he lodged into the mortgage account from his personal funds.

Whether the Defendant is entitled to any other Compensation

[145] The next issue to be considered is whether the defendant is entitled to any other compensation. Counsel for the claimant submits that the improvements and repairs that the defendant alleges, even if accepted, are not substantial and that in any event with

the exception of the kitchenette and boundary wall in 2018, they were carried out without the claimant's knowledge or consent. Counsel for the defendant submits that the defendant both carried out and financed substantial improvements.

[146] In his evidence in chief Mr. Black has put forward a figure for his alleged expenditure between 2018 and 2019. However, on cross examination he admits that he has included in this figure, alleged expenditure beyond this period. While he has exhibited a multiplicity of receipts and has mentioned in general terms expenditure he claims to have carried out beyond this period, the manner in which the evidence is presented creates a serious challenge for the court to arrive at any precise figure in relation to these claims.

[147] For example in relation to the improvements he said he carried out in 2022, such as the 10" x 12" storeroom and bathroom that he alleged that he added to the dwelling house in 2022; the installation of a third air conditioning unit; and replacement of the tiles in one of the bedrooms and in the living and dining room area of the two-bedroom flat; while there are receipts reflecting the purchase of construction materials and Ac units by Mr. Black during this period, he has provided no construction or installation receipts nor has he mentioned any costing for these activities so as to allow the court to cross check the receipts with these figures. Additionally, he has provided no receipts for work done in 2024.

[148] Moreover, Ms. Samuels is contending that with the exception of the kitchenette and the perimeter wall she was not consulted with regards to and did not authorize any of these additions. She states that she was informed about the addition of the storeroom /bedroom and bathroom after the fact, and that she did convey her objections to the defendant. Further, Mr. Black has not denied that these "improvements" beyond 2019 were not authorized by Ms. Samuels. In fact, while mentioning that he informed her about the lifting tiles in 2020, and that he informed her about building, the storeroom/bedroom and bathroom, his evidence in chief is that "from time to time, he made her aware of work being done but never needed or sought her permission for same". On cross-examination

he admitted that he did not have Ms. Samuels' permission to build the storeroom/bedroom and bathroom and went on to assert that he did not need her permission.

[149] Considering these admissions on the part of the defendant I accept Ms Samuels' evidence that she did not authorize, neither can she confirm any improvements with the exception of the kitchenette and perimeter fence.

[150] I take account of Mr. Black's evidence that he carried out necessary titling work in 2022 in the 2-bedroom section because the tiles were lifting which caused the tenant to have an accident and that in 2024 and in the aftermath of hurricane Beryl, he repaired sections of the roof and gutter which were damaged. However even if I were to accept the evidence of Mr. Black, that, the tiling work in 2022 were necessary to prevent risk and hazard to potential tenants and that the repairs of the roof after Beryl were necessary to make the property suitable for rental, he could only receive compensation for these unauthorized expenditure by relying on the principle of agent of necessity, which was never raised and is not supported on his evidence

[151] In essence he has not established that these repairs were urgent, reasonable and necessary in circumstances where he was unable to reach Ms. Samuels, the Principal (See the case of **Sachs v Miklos** [1948] 2KB,23) Moreover, even if I were to find that he satisfied these requirements Mr. Black has presented no receipt for costing in relation to roof repairs for 2024. Additionally, as it relates to tiling carried out in 2022, he has lumped all receipts together so that this court is unable to distinguish between receipts for tiles in relation to the unauthorized storeroom/bathroom and the tiling of the 2-bedroom section and the living room area.

[152] I have also made other observations as it relates to the reliability and authenticity of some of the documents Mr. Black has exhibited. While there is no mention of any work done in 2021 in his evidence in chief, he produced a receipt for "construction work done on house spot". However, I agree with the submissions of counsel for the claimant that there is no nexus between this receipt and the subject property. The receipt refers to a house spot without indicating the location. Additionally, in Jamaican parlance a house spot relates to an empty spot of land. In essence it suggests new construction and not an

addition to an existing structure. The other consideration which affects Mr. Black's credibility, is that in addition to the absence of any financial record of these "extensive repairs in 2024" he has offered no explanation as to why having carried out tiling work in 2022, there was a necessity to retile the entire house, two years later.

[153] Mr. Black has also produced receipts of items purchased between 2018 to 2024, which has no apparent connection with improvement of the property, and he has provided no explanation as to how these relate to the improvement of the property. These include receipt dated December 3rd, 2019, from Unicomer (Court Jamaica Ltd.) in the name of Hanna Deborah Tate for household items. He has also produced receipts from General Food Supermarket and from Amars for items to include, wash rags, hand towel, potholder, ladle spoon, basting spoon, and cooking, fork, outdoor mat, bathmat, carpet

[154] I share the view of counsel for the claimant, that these affect the credibility of the defendant's evidence with regard to these alleged improvements and, essentially leads this court to question whether he just throws all the receipts he could find at the court irrespective of whether they have relevance to issues between the parties.

[155] I also took account of the fact that on Mr. Black's own account that, by 2019, the parties, were already having conflicts regarding the right to ownership, which based on his own evidence were not resolved. Despite this, in 2024, he proceeded to undertake unauthorized "extensive repairs" which he has not establish were necessary, being well aware that he had no beneficial interest in the property, and that his very occupation was expressly objected to by the Claimant.

[156] In essence, I am not convinced that these unauthorized repairs were done with a genuine view to benefit the property. I am more inclined to accept the assertions of the claimant that the motivation of the defendant was the desire to remain on the property. knowing fully well that he had no beneficial interest in it. This, in my view, brings into sharp focus the principle expounded upon by Bowen LJ in the case of ***Falcke v Scottish Imperial Ins Co (1886) 34 Ch D 234 at page 248***: The principle simply stated is this; work and labour done or money expended by one man on the property of another without the authorization or acquiescence of the owner does not create any obligation on the part

of the owner to repay the expenditure. "Liabilities are not to be forced upon people behind their backs neither can you confer a benefit upon a man against his will" Ms Samuels states that she could barely afford to pay the mortgage so she would not have authorized these expenditures. Therefore, these expenses cannot be forced upon her. Consequently, I find that Mr. Black is not entitled to any compensation for any unauthorized expenditure on the improvement of the subject property.

[157] Notwithstanding, despite her contention that she was the person who financed these improvements, Ms. Samuels has not denied that she authorized the construction of the kitchenette and the perimeter wall. She has not provided any proof of how much she contributed to this expenditure; neither has she provided any evidence of the total cost of this expenditure. Her evidence that she cannot recall how much she left in the account and that she sent money right through out is insufficient to establish her contribution to this expenditure. As such I accept the evidence of the defendant that the sum she left for the construction was \$850,000. I note his evidence that only half of this was applied to the relevant construction, as the other half was used to furnish the one-bedroom flat. However, I take into consideration his admission that he was the person in occupation of the flat for a significant period, as such he derived the benefit from the use of these furniture. Therefore, I hold that her contribution was the \$850,000.

[158] Mr. Black contends that between 2018 and 2019 he spent approximately Three Million Three Hundred Ninety-Eight Thousand Four Hundred and Ninety-two Dollars and Sixty-Eight Cents (\$3,398,492.68) improving the property. He has presented receipts that can account for this sum. In the absence of any evidence to the contrary I accept his evidence that this sum was expended on property related expenses for the period. I note that this sum includes landscaping/gardening, maintenance and property tax up to 2024. He also admits that there was \$200,000 that he erroneously included in his calculation. However, in light of the fact that Mr Black has admitted that he remained in continuous occupation of the property during the period, it is my view that, he should bear the cost of the landscaping. That is as the person in occupation he had the responsibility to keep his surroundings clean, which includes preventing the premise from being overgrown with grass and weeds.

[159] Nonetheless, Ms. Samuels as the owner is responsible to pay the maintenance fees as also the property taxes. Despite asserting that the maintenance fees should have been paid from the rent she has produced no evidence that this was in fact done, while Mr. Black has exhibited receipts of payment this regard. He has also exhibited receipts of payment of property taxes. Consequently, in order to arrive at an appropriate sum to which Mr. Black is entitled in the form of justifiable compensation, I deduct , the total sum for landscaping, the \$850,000 contribution of Ms. Samuels as also the \$200,000 that was erroneously included from the sum of (\$3,398,492.68) I arrive at a figure of \$1,364,492.68 I then set this sum off against the balance of \$ 5 million that Mr. Black would have owed for use and occupation of the premises I arrive at a figure of \$ 3,635,507.32 that would still be outstanding for use and occupation.

[160] Essentially, considering the proven expenses, the benefit Mr Black gained from the occupation of the premises exceeded his expenses. However, I take into consideration, the fact that Ms. Samuels acquiesced in him actively managing the rental of the premises without remuneration. Consequently, I assess what would be a reasonable compensation in this regard. No assistance has been provided by the parties on this issue. However, in my view a reasonable rate would be an average of \$100,000 per month; applying that for a period of 6 years that is up until November 2024, I arrive at an approximation of \$7,200,000. When I set this off against the sum of \$ (\$ 3,635,507.32) I arrive at a figure of \$3, 564 492.63.

[161] I also find it necessary to mention, an observation, one which was similarly highlighted by counsel for the claimant, which is that several of the purported improvements, attested to by Mr. Black do not constitute permanent fixtures, but are rather removable properties. Items such as air conditioning units, cameras, outdoor lights belonging to Mr. Back are chattel that he will be allowed retrieve. Accordingly, there is no basis for me to award him compensation with respect to the installation of these items.

Conclusion

[162] I find that the claimant has proven on a balance of probabilities that there was a common intention between herself and the defendant that she is entitled to the entire beneficial interest in the property registered at volume 1491 folio 879 at the registered book of Titles in the names of both parties. I find that this common intention remained unchanged right throughout the parties dealing with each other and up until the filing of this claim. I find that, despite the fact that the defendant made payments on the mortgage account, he having lived in the property without paying rent, in spite of objections from the claimant from 2018 up until the hearing of the matter, the financial benefit he received surpass the amount he paid on the mortgage account. I find that Mr. Black has also incurred expenses in relation to authorized improvements on the subject property between the period 2018 and 2019. Consequently, he is entitled to be compensated for these improvements.

[163] I find that Mr. Black is not entitled to any compensation for any improvement beyond this period as he admits that he did not seek and did not get Ms. Samuel's authorization for any other improvement apart from the construction of a kitchenette and a perimeter wall. I also find that Mr. Black is entitled to compensation for payments he made towards property tax and maintenance fees as these are the responsibilities of the owner. I find that Mr. Black is not entitled to compensation for gardening/landscaping, as being a person in occupation of the premises he bears the responsibility for cutting the grass and keeping his surroundings clean. I find that defendant is entitled to reasonable compensation for work performed in relation to his management of the rental of the property. Having taken all the aforementioned factors into consideration and having set off the benefits against his expenditure, I find that Mr. Black is entitled to compensation in the sum of \$\$3, 564 492.63.

Orders

[164] Consequently, I make the following Orders:

- (i) I declare that the claimant, Ms. Peggy Samuels is the sole owner of property located at lot 331 Drax Hall Country Club, St. Ann registered at volume 1491 folio 879.
- (ii) The defendant is to sign all documents necessary to remove his name from the certificate of title within 30 days of the presentation of the necessary transfer document by counsel for the claimant to his attorney-at-law.
- (iii) The Registrar of the Supreme Court is hereby empowered to sign all documents necessary to bring into effect the orders of this court if either party is unable to or unwilling to do so.
- (iv) The defendant is to deliver up possession of the property within 90 days of the date hereof
- (v) The defendant is permitted remove all chattel belonging to him without causing damage to the property. A list of these items is to be sent to the claimant's attorney at law within 30 days from the date hereof. A notice of the date of the removal of these items is to be sent to the Claimant's attorney at law 14 days prior to the date of removal.
- (vi) The Claimant is to pay compensation to the defendant in the sum of \$3, 564 492.63.

- (vii) Payment is to be made within 90 days of the date hereof
- (Viii) Each party to bear his/her own cost.

**A. Thomas
Puisne Judge**