



[2017] JMSC Civ.101

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2015 HCV 02243**

<b>BETWEEN</b>	<b>MARRIETTE TAYLOR</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>DAZEL ALEXANDER TAPPER O/C HORACE DAZEL TAPPER</b>	<b>DEFENDANT</b>

**Ms. Coleasia Edmondson instructed by Henlin Gibson Henlin for the Claimant**

**Mr. John Jacobs and Mr. Everton Dewar instructed by John W. Jacobs for the Defendant.**

**Heard: 26<sup>th</sup> April and 7<sup>th</sup> July, 2017**

**Equity – Constructive Trust – Division of Property – Beneficial interest in properties – Unmarried couple – Common intention – Requirement of detriment**

**IN CHAMBERS**

**COR: V. HARRIS, J**

**[1]** On June 17, 2016, the claimant, Ms Marriette Taylor filed an Amended Fixed Date Claim Form seeking the following orders from the Court:

- 1)** A declaration that the Defendant Horace Dazel Tapper holds his share and or/all that property located at Lot number 179 Bella Vista Kingston 9 in the parish of Saint Andrew, registered at Volume 1057 Folio 959 in the Register Book of Titles on trust for the Claimant Marriette Taylor;

- 2) The property located at Lot number 179 Bella Vista Kingston 9 in the parish of Saint Andrew, registered at Volume 1057 Folio 959 in the Register Book of Titles be transferred into the Claimant's name only;
- 3) A declaration that the Claimant is entitled to a 100% interest in the business Buff Bay Hardware and Auto Supplies located in Buff Bay, Portland and registered under the sole name of the Defendant (hereinafter referred to as 'the Business') inclusive of its income and its capital assets howsoever and wheresoever situate, as at the date of this Order;
- 4) An Order that the Business including its income, profits and assets is to be valued by a reputable Valuator as at the date of the Order
- 5) The said valuation report is to be provided within ninety days of the date of this Order;
- 6) The costs of the valutors are to be borne in equal shares by the parties hereto;
- 7) That the Registrar is empowered to sign any and all documents necessary to bring into effect the said sale, should the Defendant fail to do so.
- 8) Costs to the Claimant
- 9) Liberty to apply; and
- 10) Such further and other relief as this Honourable Court may deem just.

### **Background**

[2] The claimant Ms Marriette Taylor and the defendant Mr. Dazel Alexander Tapper were involved in an intimate relationship for over twenty years. Their relationship deteriorated and given the evidence I have heard it would be fair to say that it came to an acrimonious end in or around the year 2010.

- [3] When the parties met, Mr. Tapper was a businessman who operated three (3) "Lumber Yards". Ms Taylor was attending Business College and she was unemployed.
- [4] In 1996 Mr. Tapper purchased a parcel of land at Buff Bay in the parish of Portland. He constructed a building which was used as a hardware store (the hardware/the business). The business was registered as Twin City Hardware up to November 2014 when it was re-registered by Ms Taylor as its proprietor in the name Buff Bay Hardware and Auto Supplies on November 18, 2014. It is agreed that all the funds to acquire the land, construct the building and stock the hardware were provided by Mr. Tapper. He is the sole registered owner of this property.
- [5] Ms Taylor worked at the hardware from it commenced operations. Her duties included paying, hiring and firing employees, as well as, replenishing the stock. It would be fair to say that her functions were consistent with that of a manager.
- [6] On June 25, 2002 a parcel of land located at 179 Bella Vista, Red Hills. Kingston 9 in the parish of St. Andrew and registered at Volume 1057 Folio 959 in the Register Book of Titles was transferred to the parties jointly as tenants in common. A house, which is still unfinished, was constructed on the property and the claimant currently resides there.

### **The Disputed Evidence**

#### **The nature of the parties' relationship**

- [7] Ms Taylor maintained that she was involved in a common-law relationship with the defendant. She stated that the parties had lived together as man and wife at the Bella Vista property for a period of eight (8) years before they parted. However, this was denied by Mr. Tapper who was adamant that during their relationship he was married and lived with his wife in St. Catherine. Ms Taylor, he said, was well aware that he was married. Ms Taylor denied this. Mr. Tapper

described their liaison as a “visiting relationship.” He denied sharing a common-law relationship or cohabiting with Ms Taylor.

### **The Bella Vista property**

- [8] There is no dispute that the Bella Vista Property was purchased by Mr. Tapper. Ms Taylor’s evidence was that Mr. Tapper paid a million dollars (\$1,000,000.00) towards the purchase price but she contributed to the closing costs. Mr. Tapper denied this. His evidence was that he gave the money to Ms Taylor to pay for the closing costs and that was why the receipt was issued in her name.
- [9] Ms Taylor said that the funds to pay for the property came from the fruits of her hard labour at the hardware. She testified that although Mr. Tapper’s name was placed on the title, it was agreed between them before it was purchased that the property was hers and hers alone.
- [10] She maintained that she paid for the construction of the house in its entirety. The money to do so again came from the hardware, as well as, two trucks that her brother had sent to her from overseas. One of those trucks, she said, was contracted to work on Highway 2000 in 2008. The construction materials were obtained from the hardware at Buff Bay.
- [11] Ms Taylor said that she had no problem footing the entire construction costs of the house because it was agreed that not only did the house belong to her but Mr. Tapper treated her as his ‘wife’ and they were business partners. The construction of the house, she said, had cost her about Ten Million Dollars (\$10,000,000.00) so far.
- [12] She said that she supervised the construction, hired and paid all the workmen. Mr. Tapper, Ms Taylor indicated, contributed approximately five percent (5%) of the construction cost by providing a few bags of cement and had very little to do with the construction of the house. That was because he openly acknowledged that the house was hers.

- [13] It was also her evidence that Mr. Tapper moved out of the house in November 2010. He told her that the house belonged to her and he was not interested in it because he had other houses that he could live in.
- [14] Mr. Tapper on the other hand stated that he paid the full purchase price for the land which he said was acquired as an investment. It was his intention to build a house on the property, sell it and use the proceeds of the sale to build other houses to sell. He said that it was never intended that either he or Ms Taylor would live there.
- [15] He maintained that Ms Taylor's name was placed on the title as a mere convenience because her father, who was a contractor, would only assist with building the house at a much reduced price if Ms Taylor's name was on the title. She neither contributed to the acquisition of the property nor the construction of the house.
- [16] Mr. Tapper deposed that he purchased all the materials that were used to construct the house and paid all the workmen, except on occasions when he would give Ms Taylor money and instructions to either purchase materials or pay the workmen. He asserted that his nephew constructed the building and as such, there was no need for the claimant to oversee the construction. Mr. Tapper said that he has spent over Fifteen Million Dollars (\$15,000,000.00) in construction costs so far.
- [17] It was Mr. Tapper's contention that he allowed Ms Taylor to occupy the house while it was under construction after she told him that she had a dispute with her uncle, with whom she resided, and needed somewhere to stay. This was denied by Ms Taylor. While she admitted that during the construction of the house she had an argument with her uncle, she was adamant that she was not just "allowed" to live at the Bella Vista property. She insisted that the property belonged to her, the house was constructed by her and that Mr. Tapper told not only the construction workers but also her friends that "Mar (referring to the

claimant) is building her house". Mr. Tapper strongly denied this aspect of the evidence.

[18] Mr. Tapper exhibited receipts for the construction materials which were issued by Lumber Depot, a hardware store in Papine, St. Andrew. On some of those receipts, there were several purchases made for zinc. Ms Taylor asserted that the receipts that were exhibited by Mr. Tapper were representative of materials he purchased for his hardware stores and not for the construction of the house at Bella Vista. She indicated that the roof of the house was constructed of decor tiles and not zinc. Mr. Tapper met this aspect of the evidence by agreeing that in fact the materials for the construction of the house, as well as, his hardware stores were purchased together. He also stated that the zinc was purchased to construct a shed to hold the building materials.

[19] Ms Taylor exhibited a letter that Mr. Tapper wrote to her. In that letter he spoke of putting her in business and her contribution to the establishment and success of the hardware. He also spoke about the Bella Vista property. That letter, Ms Taylor said, clearly revealed that it was Mr. Tapper's intention from the outset that the hardware (land, building and business) and Bella Vista belonged to her. Mr. Tapper on the other hand stated that the letter contained expressions of his love for her. It was also a desperate attempt to save their troubled relationship and ought not to be construed that he intended to "gift" both properties and the hardware business to her.

### **Buff Bay Hardware**

[20] Mr. Tapper owns a total of three hardware stores. They are the Buff Bay Hardware and Auto Supplies, Tapper's Hardware in Mineral Heights in the parish of Clarendon and Tapper's Hardware in Annotto Bay, St. Mary.

[21] Ms Taylor's evidence was that in the early stages of their relationship Mr. Tapper took her to Portland. There he purchased land in Buff Bay and constructed the hardware store. He also purchased the initial stock for the hardware. It is not in

issue that Ms Taylor made no financial contribution towards the acquisition of the property, the construction of the hardware and the purchase of the stock. However, she said that she supervised the construction, cooked for the workmen, assisted with painting the building and did other jobs during the construction of Buff Bay Hardware. This was, of course, denied by Mr. Tapper.

- [22]** She stated that from the beginning Mr. Tapper told her that she was his business partner. So she was involved in the business from its inception. When the hardware commenced operations she managed it. She was responsible for paying, hiring and firing employees, as well as, replenishing the stock. She asserted that she was not paid a salary but rather was remunerated from drawings that she made from the profit generated from the hardware and that she would also hand over money to Mr. Tapper from time to time. In 2012, she maintained, Mr. Tapper promised to give her the papers for the hardware, but he did not keep his word.
- [23]** Mr. Tapper disagreed. He said that he started the business for his daughter and it has been willed to his son. He agreed that she was responsible for hiring, firing and paying the employees. He did not dispute that she had access to all the funds that was generated by the business and that she would hand over to money from the profit that the hardware made from time to time to him. However, he told the court that all the powers she exercised as it concerned the hardware was delegated to her by him and she acted with his expressed authority.
- [24]** It was Ms Taylor's evidence that Mr. Tapper was able to set up three additional businesses from the profit generated by the hardware. Those were the two hardware stores located at Mineral Heights and Annotto Bay, as well as, a Jerk Centre in Portmore. She stated that while the other two hardware stores were named Tapper's Hardware, the one in Buff Bay was not so named. That was so because it was agreed between the parties that it belonged to her. That aspect of the evidence was vehemently denied by Mr. Tapper.

[25] Mr. Tapper denied that the hardware was operating profitably. If that were in fact so, he said, he would have no need to assist Ms Taylor with cash or goods to restock the hardware. He indicated that the two other hardware stores and the jerk centre were purchased from the proceeds of his other businesses (his Lumber Yards). He said that in 2010 he left the hardware store to Ms Taylor to operate on her own and he told her that she could take all the stock but she would be required to quit and deliver up the premises.

[26] Mr. Tapper has denied that he has reaped a lot of benefit from the hardware at Buff Bay as a result of Ms Taylor's hard work. On the contrary, he stated, it was Ms Taylor who has benefitted from his hard work. He ended his evidence by saying that Ms Taylor was not entitled to any beneficial interest in either property. He asserted that she holds 100% of the beneficial interest in the Bella Vista property on a constructive trust for him. Ms Taylor, on the other hand, has put forward that Mr. Tapper holds the entire beneficial interest in both properties on a constructive trust for her.

### **The submissions on behalf of Ms Taylor**

[27] Ms. Coleasia Edmondson, learned counsel for Ms Taylor, has submitted that the legal principles which will determine the outcome in this matter fall within the equitable realm of constructive trust. She invited the court to find that at the time both properties were acquired there was a common intention between the parties that Ms Taylor would have a beneficial interest in the Bella Vista property and Buff Bay Hardware. She also submitted that the claimant acted to her detriment in reliance on that common intention and that it would be inequitable for Mr. Tapper to claim sole beneficial ownership in the property

[28] She relied on the cases of ***Jones v. Kernott*** [2012] 1 AC 776, ***Eric McCalla et al v Grace McCalla*** [2012] JMCA Civ 31 and ***Leroy McGregor v Verda Francis*** [2013] JMSC Civ 172 in support of her submissions.



- [29]** Turning to the evidence, counsel for Ms Taylor posited that during the relationship, the parties discussed the properties and made certain decisions. Those included the promise made by Mr. Tapper to Ms Taylor that the hardware was hers, she being given exclusive management of the business and its finances and the fact that the hardware was given a different name from the other two hardware stores that he owned.
- [30]** Ms. Edmondson urged the court to accept the evidence of the claimant as to the circumstances surrounding the acquisition, construction and operation of the hardware store. She advanced that Ms Taylor's contributions were in the form of supervision during the construction phase, cooking the meals for the workmen, and painting the building with the defendant to save costs.
- [31]** She asserted that it could be implied from the conduct of the parties that there was a common intention that Mr, Tapper was "setting up Ms Taylor in business". Ms Taylor's evidence, Ms Edmondson pointed out, clearly indicated that the hardware was established solely for her and Mr. Tapper took no part in its management and operation.
- [32]** Counsel for Ms Taylor directed the court to the letter written by Mr. Tapper to her client in which he professed not only about her hard work and contribution to the success of the hardware but that she was the person whom he started the business for. In that letter as well, it is stated that he had given her a "multi-million dollar" house.
- [33]** She also advanced that the court was to accept Ms Taylor's evidence that she made financial contributions to the acquisition of the Bella Vista property and that she alone paid for the construction of the house. It was also put forward that Mr. Tapper having assured Ms Taylor that both the house and hardware were hers it would now be unconscionable for him to claim all the legal and beneficial interests in both properties. Ms Taylor, she said, believing that she was entitled to a 100% interest in both properties acted to her detriment by making significant

financial and other contributions both to the hardware and the construction of the house at the Bella Vista property.

**Submissions on behalf of Mr. Tapper**

[34] Learned counsel Mr. John Jacobs submitted on behalf of Mr. Tapper that the existence of a constructive trust in favour of Ms Taylor in both properties has not been established. He further submitted she held her portion of the legal and beneficial interest in the Bella Vista property on trust for him. Mr. Tapper's argument is that he is the sole legal and beneficial owner of both properties. Mr. Jacobs cited the cases of *McCalla v McCalla* (supra), *McGregor v Francis* (supra) and *Phillip Henry v Patsie Perkins Reid* 2012 JMSC Civ 109 in support of his submissions.

[35] Mr. Jacobs posited that there was no agreement or intention between the parties to create a trust for Ms Taylor and neither could such an intention be inferred from Mr. Tapper's conduct. His letter to Ms Taylor that was written in 2010 could not be used to establish common intention, Mr. Jacobs argued. Counsel for Mr. Tapper maintained that Mr. Tapper penned this letter as an expression of his love for Ms Taylor and in an effort to save their relationship. Ms Taylor, he said, has produced no evidence that he intended to give Buff Bay Hardware to her as a gift.

[36] Mr Jacobs urged the court to accept the evidence that Mr. Tapper paid all the costs for the construction of the house, as well as the full purchase price for the Bella Vista property. Ms Taylor, he said, made no contribution of any kind to the acquisition of the land and the building of the house.

[37] Counsel for Mr. Tapper continued that he (Mr. Tapper) permitted or allowed Ms Taylor to operate the store and gave her full access to the profit of the business in order to ensure that it remained a going concern and also to provide for her maintenance. This was because of the relationship they shared. Mr. Jacobs asserted that Ms Taylor's role in the business was merely supervisory or

managerial and that the parties were not business partners. He stated that it was neither agreed nor was there a common intention that the business (both the goodwill and the property) was to be advanced as a gift to Ms Taylor.

[38] However, Mr. Jacobs continued, Mr. Tapper has agreed for Ms Taylor to have the stock and goodwill of the hardware but she is required to vacate the premises.

### Issues

[39] The critical questions to be resolved are:

- a) Is the beneficial interest in both properties different from the legal interest?
- b) If the answer to (a) is in the affirmative, how is the beneficial interest in the properties to be apportioned between the parties?
- c) Is Ms Taylor entitled to 100% of the goodwill in the hardware store?

### The Law

[40] A constructive trust arises where two or more persons have a common intention, expressed or implied by words or conduct, that one or more is to have a specific share in a property, or an uncertain share to be determined in due course according to their contributions; and the person or persons in reliance on that common intention acted to their detriment on the reasonable belief that they were acquiring the agreed interest. (See *Grant v Edwards and Another* (1986) 2 All ER 427). The case law has demonstrated that where this occurs the courts have consistently held that it would be unconscionable or inequitable for the legal owner of the property to claim to be solely entitled to its beneficial ownership.

[41] A constructive trust can arise in circumstances involving single or joint legal ownership. If one party claims that the beneficial ownership is different from the legal ownership, then he or she must substantiate that claim by reference to what the parties intended. In a case of sole legal ownership, the onus is on the party

who wishes to show that he has any beneficial interest at all, and if so, what that interest is. In a case of joint legal ownership, it is on the party who wishes to show that the beneficial interests are divided other than equally.

- [42] To establish a constructive trust, a party is required to demonstrate the existence of an expressed agreement or a clearly discernible common intention that there was to be a shared interest. The authorities show that in the absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties. With respect to the criteria which are required to prove its existence the judgment of the Court of Appeal in **McCalla v McCalla** (supra) is instructive. In that case McIntosh JA who delivered the judgment of the court said at paragraph 27 :-

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

- [43] This principle is also applicable where the property in dispute is not the matrimonial home of the parties. In the case of **McGregor v Francis** (supra) Simmons J after referring to **McCalla v McCalla** stated the following at paragraph 104:

*“It was also accepted by that court (the Court of Appeal of Jamaica) that the above principle is equally applicable where the disputed property is not the matrimonial home of the parties. The learned Judge of Appeal referred to the cases of **Lloyd’s Bank v Rosset** [1990] 1 All ER 1111, **Peter Haddad v Arlene Haddad** SCCA No 36/2003 (delivered on 20 April 2007), **Gissing v Gissing** [1970] 2 All ER 780 and **Grant v Edwards** [1986] 2 All ER 427 and stated that they clearly show what is required to prove the existence of a constructive trust. The court made the point that although most cases involved the matrimonial home and parties whose relationships were broken, “...the principles are equally applicable where the property in question is not the matrimonial home and the issue to be determined is not as between parties to a marriage”.*”

[44] The court in **Grant v Edwards** (supra) held that the first question to be resolved is whether at any time prior to acquisition or exceptionally at some later date, there was 'any agreement, arrangement or understanding' reached between the parties that the property was to be shared beneficially. Authorities have emphasized that the evidence of that agreement, or its terms does not have to be precise or perfect. If there is an actual agreement as to whether the property is to be shared, the court will give effect to that agreement or arrangement. In **Gissing v Gissing** (supra) the House of Lords stated:

*"The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been."*

[45] Once the court has found that there is an agreement that the property is to be shared beneficially, the person asserting a claim to a beneficial interest against the other party who is entitled to the legal estate must demonstrate that he/she acted on the agreement to his/her detriment, or significantly altered his/her position in reliance on the agreement. (See **Lloyds Bank v Rosset** [1990] 1 All E.R. 1111 at page 1118).

[46] In **Gissing v Gissing** (supra) Lord Diplock emphasised that the conduct from which the court may properly infer a common intention that the non-owner was to enjoy a beneficial interest must be exclusively consistent with such an intention. The case of **Azan v. Azan** SCCA No. 53/87 (delivered on the 22nd July 1988) considered whether the use of phrases similar to the phrase "what is yours is mine and what is mine is yours" was sufficient to establish an expressed agreement between the parties regarding certain property. It was held that those words were too general to constitute such an agreement that there was a common intention that the property was to be shared beneficially.

[47] In **James v Thomas** [2007] EWCA Civ 1212 the defendant and the claimant were in a cohabiting relationship. The defendant was the legal title owner of the property that they considered to be their family home. The defendant refused to agree to the claimant's suggestions that he should sell the house and buy another in their joint names. He assured her that his efforts would benefit them both and she would be provided for. The English Court of Appeal held that there was no evidence of a common intention and the defendant's assurances did not amount to an assurance that she would have any interest in the property.

[48] In the absence of express words evidencing the requisite common intention, the court will seek to determine from the conduct of the parties whether such an agreement exists. This is done to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property. There must be evidence from the parties' conduct from which it is reasonable to infer a common intention for the non-legal owner to take a beneficial interest. As Lord Diplock said in **Gissing v Gissing**:

*"The relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by the 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."*

[49] Where there is no evidence to support a finding of an arrangement to share the beneficial interest, a constructive trust will be presumed where the claimant shows that he/she contributed to the acquisition of the property. This is a rebuttable presumption. In those circumstances, initial contribution to the cash deposit and legal charges, payment of mortgage instalments, contribution to other expenses which are referable to the purchase and expansion of the property/house will justify the inference needed to create a constructive trust. (See **Lloyds Bank v Rossett** (supra)).

[50] In **Pettitt v Pettitt** [1970] AC 777, 815 both spouses contributed to the acquisition of the property it was held that it was presumed that they intended to

be joint beneficial owners. This principle is applicable irrespective of whether both parties were the legal owners or only one was.

[51] The principles in ***Pettitt v Pettitt*** (supra) were applied in ***Eves v Eves*** [1975] 1 WLR 1338. In that case, the parties lived together. The defendant led the claimant to believe that the house he purchased, which became their home, would belong to them jointly. The claimant did not contribute directly to the purchase price but carried out substantial work on the property including re-decoration, demolishing and building a shed, breaking up concrete and preparing the lawn for turfing. The court held that she was entitled to twenty-five percent (25%) of the beneficial interest in the property under a constructive trust.

[52] Lord Denning explained the law as it relates to post acquisition conduct by stating :-

*“It seems to me that this conduct by Mr. Eves amounted to a recognition by him that, in all fairness, she was entitled to a share in the house, equivalent in some way to a declaration of trust; not for a particular share, but for such share as was fair in view of all she had done and was doing for him and the children and would thereafter do. By so doing he gained her confidence. She trusted him. She did not make any financial contribution but she contributed in many other ways. She did much work in the house and garden. She looked after him and cared for the children. It is clear that her contribution was such that if she had been a wife she would have had a good claim to have a share in it on a divorce.”*

[53] However, the court in ***Eves v Eves*** indicated that the very same conduct of the claimant would not have been sufficient to support the claim in the absence of an express representation by the defendant that she was to have such an interest.

[54] In ***Phillip Henry v Patsie Perkins Reid*** [2012] JMSC Civ. 109 Evan Brown J after discussing several of the authorities cited above observed that the post-acquisition contribution that was required to give rise to a constructive trust would need to be substantial and not of a temporary nature (See paragraphs 34 et seq).

[55] The modern approach to the issues which have arisen in this case can be found in the case of ***Jones v Kernott*** (supra). Their Lordships considered the principles that were applicable in a case where the family home is bought in the

joint names of the parties but without any express declaration of their beneficial interests. At paragraphs 51 and 52 Lord Walker stated:

*“In summary, therefore, the following are the principles applicable in a case such as this, where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests.(1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.(2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change.(3) 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** ([2007] 2 AC 432), at para 69.(4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, “the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property”: Chadwick LJ in **Oxley v Hiscock** [2005] Fam 211, para 69. In our judgment, “the whole course of dealing ... in relation to the property” should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties’ actual intentions.(5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).*

*This case is not concerned with a family home which is put into the name of one party only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as at para 51(4) and (5) above.”*



## **Analysis**

### **The nature of the parties' relationship**

- [56] The resolution of this issue will depend on the view I take of the parties' credibility. Ms Taylor gave evidence that the parties had an intimate relationship for over twenty-two years and during that time she did not know that Mr. Tapper was married. In fact it was that discovery, along with other matters, which need not be divulged here since they are not relevant to the issues, which culminated in the deterioration and ultimate termination of their relationship, she said. She also testified that they had lived as man and wife at the Bella Vista property for eight (8) years (from 2002 to 2010) before the end of their relationship.
- [57] Mr. Tapper testified that Ms Taylor was well aware that he was married and that during their relationship he lived with his wife. He denied that he cohabited with her at the Bella Vista property for eight (8) years before their relationship ended. What they shared, he said, was a "visiting relationship."
- [58] I am inclined to accept Mr. Tapper on this aspect of the evidence. I found it absolutely incredible that Ms Taylor could be involved in a relationship with Mr. Tapper for such a considerable period and had no inkling that he was married. It was simply incomprehensible to me how Mr. Tapper could have managed to keep up that kind of duplicity for so long which included living with his wife and cohabiting with Ms Taylor at the same time. The unchallenged evidence was that his wife resided in Jamaica and managed one of his hardware stores. There was no evidence presented that they were estranged.
- [59] I find as a fact therefore, that Mr. Tapper did not cohabit with Ms Taylor "as man and wife" at the Bella Vista property for "a continuous period of eight (8) years" prior to the termination of their liaison.

**Bella Vista property**

- [60] In order to succeed, given that the Bella Vista property is registered in the joint names of the parties as tenants in common, Ms Taylor or Mr. Tapper would need to displace the presumption that equity follows the law. Each of them would have to demonstrate that they had a different common intention at the time when the property was acquired or that they later formed the common intention that their respective shares would change. Additionally, it must be shown that in reliance on that common intention each party acted to his or her detriment; and as a result, one party holds the entire beneficial interest in the property for the other.
- [61] The presumption in this case, therefore, is that both Ms Taylor and Mr. Tapper have a joint interest in law and equity in the Bella Vista property which must be rebutted for either party to be awarded the entire beneficial interest.
- [62] Ms Taylor is saying that based on Mr. Tapper's representations to her that the land belonged to her, as well as, his conduct, this presumption has been displaced. Additionally, in reliance on his representations she acted to her detriment by investing her life and a considerable amount of money (\$10,000,000.00) constructing the house. The money to buy the land and build the house was realized from her hard work at the hardware. She also used money she obtained from two trucks that her brother gave her to assist with the construction of the house. All of that was done because she was under the belief that she had the sole beneficial interest in the property.
- [63] Conversely, Mr. Tapper testified that he put up the entire purchase price for the property which came from his other businesses and savings and that he had constructed the house in its entirety at a cost of \$15,000,000.00 so far. The property was bought for investment purposes only. It was to be sold on completion and the proceeds of sale used to acquire other properties for investment. Ms Taylor's name was placed on the title as a mere convenience so that her father could build the house at a much reduced price. He allowed Ms

Taylor to reside at the premises because she had a dispute with her uncle with whom she resided at the time and she was in need of somewhere to live. It was never his intention that either of them would occupy the house at Bella Vista.

**[64]** The oral evidence that came from Ms Taylor concerning the acquisition of the land and the construction of the house at Bella Vista is worth setting out in some detail:

*“The house came about because we were living at Golden Spring and because the business was doing well, I told him that I wanted a piece of land to build a house. We used to drive around, buy newspaper and we even looked at apartments. I told him that I wanted land...”*

*We went and looked at the land, I liked it and I said that we were to purchase it. It was the defendant who went to the attorney about the purchase of the land...*

*The defendant took papers to me to sign at Buff Bay. This was the papers relating to the purchase of the land. I knew then that the defendant put his name on the receipts and the title...*

*I asked the defendant why the land wasn't in my name only but he didn't answer. At the time the land was purchased the only source of income I had came from the Buff Bay Hardware...*

*I signed the document because I trusted the defendant. We were in a relationship for 22 years.*

*The plan (for the house) was designed by the defendant's friend at the time. The design for the house was done by the defendant. I asked him to do things for me because he was in Kingston and I was in Buff Bay. We were in a relationship and people in a relationship did things for each other...*

*The money to purchase the property came about because of my hard work in the Buff Bay store. The proceeds from the business helped to purchase the land so the money didn't come entirely from the defendant...*

*I considered the house to be mine. It was an agreement between the defendant and I that the house would be mine. I didn't say this in the first affidavit I gave in this matter (filed on May 27, 2015) because there was no need to place this in my affidavit because I was the one constructing my house and the agreement was known that the house would be mine even before it was built...”*

**[65]** It is to be noted that with the exception of the last two paragraphs above, the rest of the evidence was not challenged by Mr. Tapper. Mr. Tapper's viva voce evidence on this aspect of the case was as follows:

*“I handled the transaction for the Bella Vista property with the lawyers...”*

*I own other properties. The claimant's name is not on those other properties...*

*The receipts (exhibited by Mr. Tapper) are for materials for the construction of the house at Bella Vista, these are the ones that I could find...*

*I agree that the receipts are also for materials I purchased for my hardware stores because everything was purchased together. It wasn't separated – the stock for hardware and the materials for the house...*

*I bought her (the claimant) a car, a van and gave her a free house to live in...*

- [66]** Then there was the letter written by Mr. Tapper to Ms Taylor albeit when their relationship was crumbling. I have extracted the following excerpts that are relevant to the Bella Vista property:

*"You would not be in the good position you are having a paid up car and a multi-million dollar house..."*

*None of these women boosting you up a man has ever put them in a business or give them a house in Red Hills..."*

- [67]** I have found that the parties have been less than forthright with the court in regard to the Bella Vista property. The reason I have arrived at this decision is based on the observations I have made below (paragraphs 68 to 73).
- [68]** I will commence with Ms Taylor's evidence. Ms Taylor in her first affidavit dated May 27, 2015 at paragraphs 4 and 5 deposed that it was Mr. Tapper who purchased the land and that was the reason it was registered in both their names. She never gave any evidence in that document that the money to do so came from the hardware as a result of all her hard work. I would have expected that a matter of this importance or significance would have been pleaded at the earliest possible moment.
- [69]** Also glaringly omitted from her first affidavit was any evidence that there was an agreement, discussion or arrangement between them that the land and house belonged only to her. Her explanation for the omission was that there was no need to disclose the details of that agreement in her affidavit. I found the explanation unhelpful and unacceptable. The omissions caused me to question the veracity of her evidence on those two matters.

- [70]** She also stated that she constructed the house in its entirety. However, unlike Mr. Tapper who has exhibited numerous receipts, although they are dated in 2009 and up to May 2010, Ms Taylor has exhibited six (6) receipts in total. The first is dated August 13, 2009 for \$7,800.00 being the cost for one hundred and eighty (180) building blocks. There are two receipts dated February 02, 2009 for tiles amounting to \$23,107.69 and \$29,954.41. On February 22, 2010 there is a receipt for \$300,000.00 for a set of kitchen cupboards and a receipt for \$200,000.00 dated June 09, 2010 for the said kitchen cupboards. On May 15, 2010 there is also a receipt for \$10,000.00 for two hundred (200) building blocks.
- [71]** Mr. Tapper has indicated that the receipts that he exhibited were the ones he could locate. This bit of evidence sought to provide an explanation for the absence of receipts from the time he stated that the construction of the house commenced which was in 2004. I would have expected, at the very least, that Ms Taylor would have provided some explanation for the lack of documentary evidence in this area. However, there was none.
- [72]** I also had some concerns with Ms Taylor's credibility as regards the construction of the house. According to her it was her dream house. Yet it was Mr. Tapper who designed it. There was no evidence that she assisted with the design of the house. I would have thought that if Ms Taylor was about to construct her dream house that she would have played an integral role in deciding its design. It was also her evidence that the hardware was so successful that two other hardware stores and a jerk centre were established from its profit. Yet, from 2002 to now (at least 15 years) that highly profitable enterprise has not generated enough money to complete the dwelling house at Bella Vista. I found this bit of evidence to be exaggerated and contrived.
- [73]** It is my conclusion that there was never any expressed agreement between the parties that the beneficial interest in the property belonged exclusively to Ms Taylor whether before or at the time it was acquired. I will, therefore, go on to consider what would have been the parties' common intention at the time the

property was bought. I will also determine if that intention changed sometime later. I will conduct this exercise by carefully scrutinizing the evidence in order to determine the share that each party is entitled to which I consider to be fair 'having regard to the whole course of dealing between them in relation to the property.' (See ***Oxley v Hiscock*** [2005] Fam 211 para. 69 which was cited with approval and applied in ***Jones v Kernott*** (supra)).

- [74] The purchase of the property was a significant factor, to my mind, in the conduct of the parties. From the evidence given by Ms Taylor it was clear to me that the parties from the outset located and viewed the property together. Mr. Tapper paid for the property. The receipt for the initial deposit of \$1,000,000.00 was issued in the joint names of the parties. Ms Taylor said that she paid the closing costs which amounted to \$47,945.00. This I accept. Mr. Tapper did all of the transactions with the attorneys and took the papers to Ms Taylor to sign, which she did. I draw the inescapable inference that both of their names would have appeared on those documents and they both would have been aware of that fact. Thereafter, the title was issued in their names as tenants in common.
- [75] Next the house was partially constructed and Ms Taylor went to reside there and does so until now. I cannot say that I am persuaded by Mr. Tapper's evidence that he "allowed" her to live there because she was in need of a place to live following a dispute that she had with her uncle. The fact which I find to be proved on the totality of the evidence on this issue was that house was being constructed as "the love nest" of both parties.
- [76] Having seen the parties and considered carefully the totality of the evidence I have found that both parties contributed to the construction of the house at Bella Vista, although I am compelled to the conclusion, based on the documentary evidence presented by Mr. Tapper, that his contribution would have exceeded that of Ms Taylor's by far. I do not accept that she spent at least \$10,000,000.00 building the house. However, I do not view as insignificant or *de minimis* the

financial contribution of \$618,806.00 which Ms Taylor was able to prove by way of receipts drawn in her name.

**[77]** In addition, I am persuaded that she would have also paid the workmen, visited the site with Mr. Tapper on Sundays and that she played a role in the supervision of the ongoing construction. I am satisfied that she acted in the manner she did because she was led by Mr. Tapper to believe that she would share in both the legal and beneficial interests in the property.

**[78]** In any event, the old adage that “the palest of ink is mightier than the strongest of words” is apt in the circumstances of this case. Even if it is accepted that Ms Taylor made little or no contribution towards the acquisition of the land and subsequent construction of the house, on the strength of the letter that Mr. Tapper wrote to her, and in particular the extracts found at paragraph 66 above, coupled with the evidence detailed at paragraphs 64 and 65, I am also of the view that the presumption of an advancement by Mr. Tapper to Ms Taylor of an undivided portion of the legal and beneficial interests in the property could be reasonably inferred.

**[79]** I am convinced on a balance of the probabilities that at the time that the Bella Vista property was acquired the parties had a common intention to share equally in the legal and beneficial interests. That intention, it is my finding, remained unchanged up to the time that their relationship broke down. In reliance on that common intention Ms Taylor acted to her detriment and contributed money, materials and her time towards the construction of the house. It would now be inequitable or unconscionable to allow Mr. Tapper to deny Ms Taylor a beneficial interest in the property. The presumption, therefore, that equity follows the law has not been rebutted by either party in this matter.

**Buff Bay Hardware**

- [80] Ms Taylor is claiming a 100% interest in the hardware inclusive of its income and capital assets (which includes real property).
- [81] It is undisputed that Ms Taylor made no contribution to the acquisition of the land, the construction of the building and the stocking of the hardware. Mr. Tapper is registered as the sole legal owner of the property on which the business is located.
- [82] Ms Taylor has maintained that the parties were business partners and there was an agreement between them from as early as either 1997 or 1998 that the business, inclusive of the real property, was hers. As a result, she acted to her detriment by supervising the construction, cooking for the workmen and painting the building with Mr. Tapper to save costs. Her evidence was that he promised to give her the papers for the property in 2012 (I understood this to mean that he promised to transfer the property to her) but has failed to keep his word.
- [83] It is uncontroverted that Ms Taylor managed the hardware from it commenced operations. Mr. Tapper has disputed that they were business partners and that there was an agreement between them that the business, the building and the land on which they are located belonged to her. His posture was that the business, inclusive of the real estate, was always his but in 2010 he turned over the hardware to Ms Taylor to operate because it was no longer doing well. He never promised to transfer the property to her in 2012. However, Mr. Tapper indicated that he was willing for her have all the stock in the hardware but she would be required to vacate the premises.
- [84] Ms Taylor's evidence as it relates to the hardware was that:
- i) The hardware was originally registered as Twin City Hardware. This she said was because Mr. Tapper's other businesses had the name "Twin City" and he



wanted to keep the payment of taxes in the same name. She, however, re-registered the business in 2014 as “Buff Bay Hardware and Auto Supplies”;

- ii) She was not paid a salary, but took drawings from the profit, which she used to re-stock the business and for her personal use. She also shared the profit with Mr. Tapper albeit not equally;
- iii) In the letter that Mr. Tapper wrote to her he stated:

*“**You are the one who started this business** for that you cannot be paid its priceless...*

*If I did not love you I would not be having you in **my business**...*

*None of the women boosting you up **a man has ever put them in a business**...*

(Emphasis added)

- [85]** Ms Taylor is asking me to find from all the evidence presented that there was an expressed agreement between the parties that the business, inclusive of the real property, was hers.
- [86]** A distinction is to be made, in my view, between the actual business operations or established business and the business premises/real property. I am unable to agree that the evidence being relied upon showed “an agreement, arrangement or understanding” that was reached between the parties that the real property belonged to Ms Taylor and that she was therefore entitled to its entire beneficial interest.
- [87]** Consequently, in the absence of such an agreement, Ms Taylor would need to demonstrate that she either contributed to the acquisition of the property or that she made significant post-acquisition contributions to the improvement of the property, to which Mr. Tapper acquiesced and as a result, he held the beneficial interest in the property upon a constructive trust for her. Regrettably, I have found that there is no such evidence.

- [88]** Ms Taylor made no contribution towards the acquisition of the land, neither to the construction of the building nor the stocking of the hardware. The only evidence that she presented which she hoped would have been sufficient to persuade the court that she acted to her detriment was that she supervised the construction of the building, cooked for the workmen and assisted with painting. Even if this aspect of her evidence was accepted, her contribution would fail to meet the threshold of what is required to prove detriment as I regard it as being trifling and transient in character.
- [89]** I have observed that the property, unlike Bella Vista, was registered in Mr. Tapper's name. The business was initially registered in the same name that was shared by his other businesses. The profit was distributed between the parties. Ms Taylor conceded in cross examination that the words used by Mr. Tapper in the letter that he had penned to her that he had "put her in his business" made it plain that up to the time that it was written, he still considered the hardware to be his business. If Ms Taylor was relying on that letter, as well as, her managerial role in the business to convince the court that the parties had a common intention that the business and the real property were entirely hers, she has not succeeded.
- [90]** It is obvious to me that what the evidence disclosed was that the parties were both involved in the operations of the hardware. The duties that Ms Taylor performed were consistent with those undertaken by a manager. It was not disputed that she enjoyed substantial control over many aspects of the operations of the hardware which included a free rein over the fruits of her hard labour as she described it (using any profit generated as she desired whether it be for her personal use, re-stocking the business or sharing it with Mr. Tapper). However, I find that this was on account of the nature of the relationship that the parties shared. That relationship, does not give rise to an inference, without more, that she is entitled to the entire beneficial interest or any interest at all in the real property that the hardware occupies. Neither does it, by itself, automatically give her the right to 100% of the goodwill of the business.

- [91]** Mr. Tapper's evidence, which I have accepted, was that he turned over the hardware to Ms Taylor in 2010 to operate. This was because it was no longer profitable. I took this to mean that he no longer participated in any aspect of its operations. I pause here to note that Ms Taylor spoke glowingly of the hardware's success and what was achieved by Mr. Tapper as a result. However, I find it curious that Ms Taylor has not filed any statements of account or tax returns to substantiate this claim. As indicated above, it is indeed remarkable that the hardware generated enough profit to cause the establishment of three additional businesses and yet the house at Bella Vista remains incomplete after its construction commenced fifteen (15) years ago.
- [92]** In the process of giving oral evidence, Mr. Tapper indicated that Ms Taylor may have all of the hardware's stock but she is required to quit and deliver up the premises. The court finds his stance to be reasonable in all the circumstances and will give effect to it. However, had this not been the situation, it would have been my decision, in all the circumstances, that Ms Taylor be awarded a significant portion of the goodwill in the business. This would have been, in my view, the fair and just thing to do, in light of Mr. Tapper's decision to turn over its operations to her in 2010 when the business, as he said, became unprofitable.
- [93]** Based on the evidence and view I have taken of the parties' credibility I have concluded that Mr. Tapper is entitled to the entire legal and beneficial interest in the real property on which the hardware is located.

**Disposal**

- [94]** The Claimant and Defendant are each entitled to fifty percent (50%) of the beneficial interest in the property located at Lot Number 179 Bella Vista Kingston 9 in the parish of Saint Andrew, registered at Volume 1057 Folio 959 in the Register Book of Titles.
- [95]** The Defendant is solely entitled to all the legal and beneficial interest in the real property located at Buff Bay in the parish of Portland on which the Buff Bay Hardware and Auto Supplies is currently operated.
- [96]** The Bella Vista property is to be valued by a reputable valuator agreed upon by both parties. The cost of the valuation is to be borne equally by both parties. If the parties cannot agree to a valuator then the Registrar of the Supreme Court shall appoint one.
- [97]** The Claimant has the first option to purchase the Defendant's shares in the Bella Vista property within ninety (90) days of receiving the valuation of the said property, failing which, the Defendant shall have the option to purchase the Claimant's share within ninety (90) days of the failure of the Claimant to exercise the first option.
- [98]** If either party fails to exercise the option to purchase each other's share in the property, the property shall be placed for sale on the open market and the net proceeds of the sale are to be divided equally between the parties.
- [99]** If the Claimant exercises the option to purchase her attorneys-at-law shall have carriage of sale. If the Defendant exercises the option his attorneys-at-law shall have carriage of sale.
- [100]** The parties are to bear the cost of the sale equally.

**[101]** The Registrar of the Supreme Court is empowered to sign any and all documents required to give effect to the sale of the property should any of the parties be unable or unwilling to do so within fourteen (14) days of being notified in writing.

**[102]** The Claimant, with the consent of the Defendant, is awarded 100% of the stock in Buff Bay Hardware and Auto Supplies located at Buff Bay in the parish of Portland.

**[103]** Each party to bear their own costs.

**[104]** Liberty to apply.