

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2009/0114

BETWEEN:

MARCELLA DE FREITAS

Claimant

and

FRANCIS LEWIS

Defendant

Appearances:

Ms. Diana Thomas for the Claimant

Mr. Oswald Larcher for the Defendant

2010: 23rd September

2011: 28th March

JUDGMENT

- [1] **BELLE, J.:** The claimant Mrs. Marcella De Freitas and the defendant Francis Lewis met in 1997 and became friends. Sometime around 1999 or 2000 they started a sexual relationship. It was a visiting relationship at first. This was necessary because Mrs. De Freitas' son Sean continued to reside at her home along with another relative. However the situation changed after the son moved into his own apartment, and the relative left the home to stay with Sean.
- [2] Around 2001 according to Mrs. De Freitas she asked Mr. Lewis if he would like to accompany her on a trip to St. Lucia. He responded that he would go to St Lucia with her if she invited him to come and live with her. But Mr. Lewis claims that it is Mrs. De Freitas who invited him to reside with her. In any event Mr. Lewis never moved in with Mrs. De Freitas until the couple returned to the UK from St. Lucia.
- [3] During the trip to St. Lucia the couple looked for a place for Mrs. De Freitas to purchase. They eventually found a property in Rodney Bay and Mrs. De Freitas decided to purchase this property. According to Mrs. De Freitas, Mr. Lewis complained

that only her name was going on all of the documents and he thought that after everything he had done for her she would put his name on the purchase documents so that they would be purchasing jointly.

- [4] Mr. Lewis was of the view that the couple wanted to retire to St Lucia together while Mrs. De Freitas stated that she intended to have the property as a retirement home but it was not to be a joint retirement home. However she did admit that after Mr. Lewis agreed to make a contribution to the purchase of the property she warned him that this would not mean that he would be entitled to a half share of the property if things did not work out.
- [5] It cannot be disputed that Mrs. De Freitas contributed the bulk of the funds toward the deposit on the purchase price. Mr. Lewis contributed £4000.00 or EC \$20,000.00 while Mrs. De Freitas contributed over \$70,000.00 to the deposit. She then sourced the remainder of the purchase money on her own and with assistance from family members. This was another \$400,000.00
- [6] Some of the proceeds from the sale of a house at Tottenham/Plevena Crescent were used to pay the purchase price of the property along with loaned funds. By this time, that is, beyond 2001 Mrs. De Freitas had planned her retirement. But to qualify for a loan she needed to partner with someone who was working. Indeed her bank Cheltenham & Gloucester declined to extend a loan to her and Mr. Lewis jointly. The reasons given by the bank for their refusal were firstly that Mr. Lewis did not have a bank account with the said bank. Secondly the Farmer Road property which was being mortgaged was Mrs. De Freitas' property and since the parties were not married Mrs. De Freitas would need independent advice.
- [7] It was in this backdrop that Mrs. De Freitas claimed in her Statement of Claim:
- "(1) A declaration that the defendant holds a share in the property registered in the Land Registry of Saint Lucia as Block 1254B1119 in trust for the claimant;
 - (2) A permanent injunction be issued restraining the defendant from entering on the said parcel of land;
 - (3) A permanent injunction be issued restraining the defendant from harassing, threatening, assaulting or otherwise molesting the claimant;

- (4) Such consequential orders as may be necessary;
- (5) Costs;
- (6) Further or other relief."

[8] Mr. Lewis in his defence stated that he was entitled to a half share in the Rodney Bay house but he never filed a counterclaim.

[9] In order to relate this factual matrix to the relevant law it would be necessary to formulate a method of analysis that takes the legal principles into account. In my view a useful analysis of the facts would have to be centred around the following questions:

- (1) What were the actual contributions made to the purchase of the house at Rodney Heights in St Lucia?
- (2) Would the payment of rent or the mortgage at Farmer Road in Leyton, England qualify as a contribution to the purchase of the Rodney Bay property?
- (3) Could the defendant afford to make a contribution to the purchase of the Rodney Bay property?
- (4) Whose evidence on these matters should the court believe?

[10] Counsel for the claimant Mrs. De Freitas relied on the judgment of Baroness Hale of Richmond in **Stack v Dowden** (2007) 2 AC 432 where the Learned justice of the House of Lords offered an in-depth study of the relevant legal discourse. Baroness Hale had this to say at page 459 paras. B to F of the said judgment:

"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 intention 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 monies; 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 their 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 when only one is the owner of the home. The arithmetical calculation of how much was paid by each is also likely

to be less important. It would 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 of 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."

The Evidence

- [11] On assessment of the evidence generally I find that this is a case in which it is obvious that both parties are guilty of stretching the truth at times. Usually this is indicated by the words "I can't remember." Consequently I conclude that Mrs. De Freitas probably minimized the full magnitude of the relationship between herself and Mr. Lewis and he in turn exaggerated the facts in relation to the relationship.
- [12] However overall I find that Mrs. De Freitas was more credible on most of the relevant issues. The main areas of doubt were on the question of the notation of ½ share for each party on the Title Documents including the purchase agreement for the Rodney Bay property and Mrs. De Freitas being named as beneficiary on Mr. Lewis' life insurance policy. However the evidence shows that Mr. Lewis made only a limited direct contribution to the purchase or development of the property at Rodney Bay. I therefore find that the attempts to relate the contributions made to the Farmer Road dwelling house in Leyton and the Cedars Road property in Castries St Lucia are misguided although relevant to the nature of the relationship between the parties.
- [13] On the first point of analysis of the evidence, that is the magnitude of the contribution to the purchase of the Rodney Bay property, I have gleaned the following facts.
- [14] Mr. Lewis evidence in Chief was that as a gas engineer his salary was £450.00 weekly, and with overtime and emergency calls, he would realize an extra sum of £150.00 weekly on a regular basis. Additionally his private work brought in another £200.00 per month.

- [15] Mr. Lewis also claims that he supported Mrs. De Freitas morally, emotionally and financially during the court proceedings against 3 of her children. He claimed that he made a contribution of £450.00 monthly toward the mortgage of the disputed property No.1 Plevana Crescent. But he produces no evidence to support this.
- [16] Mr. Lewis also identified a payment of \$15,000.00 toward the renovation of Mrs. De Freitas dwelling house at Cedars Road in Castries. This house was subsequently rented and the claimant had realized revenue to her benefit from this. Mr. Lewis said he never requested any compensation.
- [17] As far as the direct contribution to the Rodney Bay property was concerned Mr. Lewis stated that as a result of certain cash payments made towards the purchase of the their dwelling house the parties agreed that upon their return to England he would make a payment toward the mortgage at Mrs. De Freitas dwelling house at No.60 Farmer Road. To that effect he paid £600.00 monthly toward the mortgage. This figure was arrived at because Mrs. De Freitas salary could not meet her mortgage payments. There is some evidence of these payments being made during the time Mr. Lewis lived in Mrs. De Freitas' home in Farmer Road. I therefore find that these payments (not always as much as £600) were made for a period of about six years. However the significance of the contribution is ambiguous since some of it would have gone toward household expenses or as Mrs. De Freitas put it, Mr. Lewis' "keep."
- [18] To sum it all up, Mr. Lewis said that in addition to paying as stated before towards the mortgage, he took a loan to renovate Mrs. De Freitas' Cedar Road property to the tune of \$15,000.00. Further an additional loan of £4000.00 was taken out towards the (Rodney Bay) property. He also alleged that there was revenue realized by the claimant from the property since its renovation. Mr. Lewis' contribution based on his evidence would have included the value of the payments made in the UK to the Farmer Road mortgage between 2001 and 2007 which were transferred to St. Lucia to complete payments for the property at Rodney Bay.
- [19] Mr. Lewis was of the view that Mrs. De Freitas was fully acquainted with Schedule 1 and 2 attached to his witness statement which showed that she received rental monies from the Rodney Bay property. This continued up to 2007 the period when the parties'

intimate relationship came to an end. The schedules seem to imply that the rent of \$91,000 collected over the relevant period was spent on various fees, maintenance, repairs and improvements to the Rodney Bay property prior to Mrs. De Freitas' entry into occupation.

[20] Mrs. De Freitas' account of the Mr. Lewis' relationship with the various properties mentioned in the case begins with the Tottenham home which she said was occupied by her husband and one of her sons Edmund at the time of her husband's death. In 1995 she had bought the house in Farmer Road where she was living at the time of her husband's death. After her husband's death she made a decision to sell the house at Tottenham. But her children with the exclusion of Sean resisted this move on her part. This resulted in court action.

[21] Mrs. De Freitas says that Mr. Lewis was very helpful to her with emotional and moral support at the time of her husband's death. He supported her emotionally during the court proceedings. They became close friends as the court proceedings progressed. They remained friends and later in about 1999 or 2000 the friendship became intimate.

[22] Mrs. De Freitas and Mr. Lewis discussed Mrs. De Freitas's plan to retire to St Lucia. She informed Mr. Lewis, after the court case determined that the Tottenham house was hers, that she intended to sell the Tottenham property and use the proceeds to buy a retirement home in St Lucia.

[23] The parties later travelled to St Lucia where Mr. Lewis helped Mrs. De Freitas look for a property. They soon found a property in Rodney Bay and had meetings with the intended vendors and their lawyer Mrs. Lewis.

[24] Mrs. De Freitas admits that Mr. Lewis attended the first meeting with the Vendor's lawyer. She says she was advised as to the necessities for the sale to proceed. She provided the necessary particulars for the preparation of the Deed of Sale. The parties to the sale agreed to a deposit by the purchaser of \$70,000.00 with the balance to be paid on Mrs. De Freitas' return to England. Mrs. De Freitas also agreed to pay Mrs. Lewis all of the fees. The Deed was to be signed while Mrs. De Freitas was in St. Lucia. The relevant letter was produced in evidence. Based on the production of this

kind of documentary evidence I see no reason to disbelieve this aspect of Mrs. Defreitas' account.

[25] As Mrs. De Freitas relates it, the initial letter from Mrs. Lewis informing her bankers of the details of the purchase referred to her alone because Mrs. Lewis was acting for her alone.

[26] However, that night, after the meeting with Mrs. Lewis, the lawyer, on return to Mr. Lewis' sister's home in Babonneau Mr. Lewis expressed disappointment that he was not included in the Deed. According to Mrs. De Freitas, Mr. Lewis said that he too wanted to retire in Saint Lucia. He had helped her so much over the years and they were in a relationship. He said he had no money in Saint Lucia but that he would get monies from England when he returned to England and contribute to the purchase price.

[27] Mrs. De Freitas insisted that the following day 26th July 2001, she went to her bankers and withdrew the sum of \$70,000.00 to be paid by Banker's Draft in the name of Lucia Lubin and a further \$14,543.00 to be paid to Mrs. Shirley Lewis for the Deed of Sale. These sums were indeed paid as promised and on the same day Mrs. De Freitas instructed Mrs. Lewis to include Mr. Lewis' name on the Deed as he had agreed to contribute to the purchase when he returned to England.

[28] The parties signed the Deed on July 30th 2001 and left Saint Lucia soon after for England.

[29] The final details of the loan payment and the involvement of Mr. Lewis are related by Mrs. De Freitas as follows:

"The plan Mr. Lewis and I had then was for us to take a joint loan at my bank where we would both be responsible for the payments. I agreed to approach my bank. I went to my existing mortgagee, Cheltenham & Gloucester. The Bank refused the joint application on the basis that Mr. Lewis did not bank with them and that the proposed collateral (my house on Farmer Road) only belonged to me so that I had to now get full and independent legal advice. Mr. Lewis therefore agreed to approach his bankers. Mr. Lewis later on, in or around September 2001 told me that he could only have obtained a loan of £4000.00 towards the house. I remember clearly expressing surprise and saying to him: "what is that all?" I then told him that if anything happened

between us he should not expect to get half of the property. I did tell him he would get what he put in if I sold the property.

On 13th September 2001 I sent £50,000.00 to Saint Lucia for payment to Mrs. Lewis for onward payment to Mr. Henry Lubin and Lucia Lubin. The transfer arrived in my account in Saint Lucia at the Barclays Bank Account No. 449486, as \$212,463.00. I was able to get the above sum from selling the Tottenham property. This money was soon thereafter paid over to Mrs. Lewis in the sum of \$200,000.00.

.....
I was later able to raise the balance of \$200,000.00 from the following sources: (1) a loan of \$20,000.00 from my aunt, Catherine St. Martin, in Saint Lucia, (2) some monies I was entitled to under a pension plan (3) taking out a re-mortgage on my home at Farmer Road and (4) taking out a personal loan. I sent this to my Saint Lucia account which was then paid over to Mrs. Lewis on behalf of the vendors."

[30] Mrs. De Freitas also explained in her witness statement that in late 2008 Mr. Lewis followed her down to St Lucia. He asked her for a key to the house and his half share of rent and half share of the house. She said she offered to pay him back his contribution plus whatever appreciation in value it would have. Mr. Lewis then brought his brother with him to saw off the padlock from the gate to the house. He also took down the house's front door. As a result she brought the Claim and application for an injunction.

[31] Mrs. De Freitas indicated that in 2008 Mr. Lewis filed a suit in England in the Bow County Court claiming a right to occupy the Farmer Road property. She in turn filed suit for possession of her property. But Mr. Lewis eventually discontinued the suit against her and moved out of the Farmer Road House.

[32] I must interject that nothing asked in cross-examination challenged the assertion that Mrs. De Freitas made the direct contributions, she spoke of, to the purchase of the Rodney Bay property. The challenge to Mrs. De Freitas evidence was focused only on Mr. Lewis indirect contribution in England and alleged assistance in repairing Mrs. De Freitas house at Cedar Drive in Castries. However none of this evidence is as precise as that of Mrs. De Freitas in relation to the Rodney Bay property. I therefore prefer Mrs. De Freitas account of the parties' contribution to the house and the latter incidents. On these matters I consider Mrs. De Freitas to be telling the truth while Mr. Lewis tries to

stretch the truth to include alleged contributions to other properties as contributions to the purchase of the Rodney Bay property.

Counsel's Arguments

- [33] Counsel for the defendant, Francis Lewis argued that the process of executing a Deed of Sale and registering the property in the name of both parties was an indication that there was absolute certainty in the intention of the parties at the time of the purchase of the land. He submitted that where the intention of the parties to a contract is sufficiently apparent, effect must be given to it.
- [34] In support of this contention he cited the authority of **Berthel v Scotten** (1895) 24 S.C.R 367 CAN cited from the **Reissue of the English and Empire Digest** Vol. 17 1974 Reissue, under the rubric " Deeds and other instruments" No.307 at page 304.
- [35] Counsel noted that the parties had both attended an attorney's office and instructed that she, "prepare a Deed of Sale for us." Counsel argued that the court is next required to construe the Deed of Sale. The only interpretation open to the court in that regard was for the Deed to be construed to mean that which is expressed.
- [36] The specific expression referred to by counsel gleaned from the Deed of Sale was in the "Whereof" record as follows:
- "in witness whereof the parties hereto have hereunder set their hands after due reading thereof as follows: THE PURCHASERS at Castries on the 30th day of July 2001 in the presence of the said Notary and THE VENDORS at Castries on the day month and year first hereinbefore written with and in the presence of the said Notary."
- [37] Counsel further submitted that the Court is to adhere to the governing principle in arriving at a just decision, to give effect to the intention of the parties as expressed in words of the parties' Deed of Sale. The Court should also work within the confines of the general rule that a person is presumed to intend the consequences of his acts, whether in fact he intended them or not.
- [38] Alluding to the evidence, Counsel argued that the claimant enjoyed the benefits of a period of six (6) years when her property was rented and she made no complaints.

Based on this experience she and the defendant continued their relationship with absolute certainty to enter into a contract to purchase specific property, namely; Block 1245B 1119.

- [39] According to counsel there was nothing under the provisions of the Civil Code which would render the contract a nullity. They must therefore accept the consequences of the contract in accordance with Article 956 of the Civil Code of Saint Lucia which states, "the obligation of a contract extends not only to what is expressed in it but also to all consequences."
- [40] Counsel provided no authority to guide the court on the application of Article 956 of the Civil Code.
- [41] Finally counsel for the Mr. Lewis argued the claimant is estopped from arguing that she had an intention other than that recorded in the Deed of Sale. He relied on paragraph 1018 page 893 of Volume 16 of **Halsbury's laws of England** Fourth Edition, London 1992.
- [42] Halsbury's states: "The general principle is that when a person had entered in a solemn engagement by deed as to certain facts, he will not be permitted to deny any matter which he has so asserted."
- [43] At paragraph 19 it states: "a party is estopped from denying any specific facts contained in a recital in a deed to which he is a party"
- [44] But at paragraph 1025 the following is stated: "No estoppel can arise upon a deed in so far as it is void on the ground that it was obtained by fraud, force or other foul practice or is a forgery."
- [45] Counsel submitted that the evidence was that the claimant was aware of the content of the Deed before signing it, and it was signed in the presence of the executing Notary. Consequently he argued, the claimant is estopped from saying that she is not aware of the contents of the Deed, even though she accepts it is her deed.

- [46] Counsel argued that the additional act of registration of the Deed in the Land Registry pursuant to the Land Registration Act No 12 of 1984 of absolute title giving both parties a one half share of the property consistent with the Deed of Sale has the effect that subject to section 23 of the Act a person " as the proprietor of a parcel of land with absolute title vests in that person the absolute ownership of that land together with all rights and privileges belonging, but free from all other interests and claims whatsoever, but subject to certain leases, hypothecs, overriding interests etc..."
- [47] Counsel's final submission was that the law of St Lucia equates with the law of England to provide the proprietor of a statutory title in land with the power of disposition in accordance with that title and the Act, but subject to notes appearing on the register restricting those powers.
- [48] I consider this latter submission to be an accurate account of the law with regard to the statutory proprietor's power of disposition.
- [49] Pursuant to the aforementioned principles of law and interpretation of the facts, counsel argues that the defendant is entitled to:
- (1) A Declaration that he is entitled to an undivided one half ($\frac{1}{2}$) share of the property recorded in the Land Registry as parcel 1254B 1119
 - (2) A half share of the value of the said property and costs thereof.
 - (3) A Declaration that he is entitled to a half ($\frac{1}{2}$) share of all rents collected from the date of him losing access to the property.
 - (4) A account of all rent collected by the claimant plus interest and costs.
- [50] This argument raises 2 issues of both law and fact. These are:
- (1) Whether the fact of the existence of a deed of sale and registered title declaring that the parties are owners of one half ($\frac{1}{2}$) share in the property is conclusive regarding their intention at the time of the purchase.
 - (2) Whether the claimant is estopped from saying that she did not have the intention of giving the defendant one half ($\frac{1}{2}$) share in the property.
- [51] Counsel for the Mrs. De Freitas referred to the 2007 House of Lords decision in **Stack v Dowden** (2007) 2 AC 432. According to counsel the head note to the decision

encapsulates the ratio decidendi of the majority in the House of Lords. That Head note reads:

"Held: (Lord Neuberger of Abbotsbury dissenting) that where a domestic property was conveyed into the joint names of cohabitants without any declaration of trust there was a prima facie case that both of the legal and beneficial interests in the property were joint and equal; that the onus of proof lay upon any party seeking to establish that equity should not follow the law; that such a party had to prove that the parties had held a common intention that their beneficial interest be different from their legal interests, and in what way; that in order to discern the parties' common intention the court should look at the parties' whole course of conduct in relation to the property; that the law had moved on from the presumption of a resulting trust and many more factors other than the parties respective financial contributions might be relevant to divining their true intentions; and that when all relevant factors had been taken into account , cases in which the joint legal owners were to be taken to have intended their beneficial interests should be different from their legal interests would be very unusual."

[52] Counsel localized the legal issues in the case by referring to Article 916A of the **Civil Code Cap 4 of the Revised Laws of St Lucia 2001** which states:

- (1) All persons capable of disposing freely of their property, may convey property, moveable or immoveable, to trustees by act inter vivos or by will for the benefit of any persons in whose favour they can validly dispose of their property. They may also constitute themselves, either alone or jointly with others, trustees of their own property for the benefit of other persons.
- (2) Implied, constructive and resulting trusts shall arise under the law of [Saint Lucia] in the same circumstances as they arise under the law of England."

[53] In this manner counsel asserted that she would be applying the law of England to the circumstances of this case for the determination of the legal issues. She referred to **Stack v Dowden** as the leading case on separation of property where one party seeks to establish a beneficial interest different from the legal interest.

[54] In accepting that the claimant had the burden of proof to establish that Registered Title in the names of both the claimant and the defendant, each owning a one half share, was not conclusive of the parties' beneficial ownership of the property, counsel proceeded to outline what she considered to be the central factual issues which support her client's case and guide the court accordingly.

- [55] Counsel submitted in pursuit of the said goal that it is common ground that at the time of the acquisition and sometime during the period August 2001 to November 2001 Mr. Lewis gave the Mrs. De Freitas the sum of £4,000.00 towards the acquisition of the house. Mrs. De Freitas has suggested that this sum amounted to about EC\$18,000.00. This sum was raised by a personal loan taken by Mr. Lewis for the specific purpose of making his contribution to the acquisition of the Rodney Bay property. Mr. Lweis stated in cross examination that a fair conversion from the British pound to the EC Dollar would have been EC \$5.00 to £1.00. If this conversion is accepted, the defendant's direct contribution according to the undisputed evidence amounted to about EC\$20,000.00 at its highest. This from Mrs. De Freitas' calculations amounted to 4% of the purchase price of the Rodney Bay property.
- [56] Counsel was of the view that the first factual issue to be determined was whether the defendant contributed more than 4% of the purchase price to the acquisition of the Rodney Bay property and if so, how much? The second is whether, looking at the dealings of the parties with each other it can be inferred that they intended that the Rodney Bay property should be shared equally even if the legal title is in both their names.
- [57] It is instructive to note that while counsel for Mr. Lewis relies solely on the fact of the Deed of Sale declaring that the purchase would be in equal shares of one half each, along with the statutory foundation for relying on registered title, counsel for Mrs. De Freitas regards the facts surrounding the entry of the names as proprietors in equal shares as relevant but does not rely on the fact of the entry alone. However Baroness Hale had noted in **Stack v Dowden** that in situations where the parties are arguing that the beneficial interest is different to the legal interest the court is to look at the reasons for acquiring the title in the parties' joint names.
- [58] Counsel argued that if there was ever an example of a rare case this is it. But regardless of whether one follows the reasoning of Baroness Hale or that of Lord Neuberger in his dissenting judgement the result should be the same that the defendant is holding his half share in trust for the claimant.

[59] The Mrs. De Freitas' counsel followed the schematic approach of Baroness Hale in which about 12 factors were identified which influence the decision on the allocation of the beneficial interest in the disputed property in cases of this nature. I summarize the analysis below.

[60] Counsel argued:
Any advice or discussion at the time of transfer:

One issue is whether there was a discussion in which it was agreed that the defendant would contribute when he returned to England. This is denied by the defendant who states that the plan was that they would retire together in Saint Lucia. However if the claimant is to be believed it would mean that the defendant would contribute his share of the Rodney Bay property, and they (the Parties) would share only according to their contributions.

The reason why the home was acquired in their joint names:

Counsel was of the view that there is no reason proffered by the defendant as to why it was necessary to have the Rodney Bay property acquired in the parties' joint names. However she submits that based on the claimant's evidence that the defendant would contribute after he returned to England, and the fact that the claimant paid the deposit, the inference to be drawn is that the defendant would own only to the extent of his contribution.

The purpose for which the home was acquired:

The parties agree that the home was a retirement home. But the question is for whom. Counsel argues that it is difficult to envisage the defendant planning a retirement in 1999 or even in 2001 when he had no assets or resources to retire with. The evidence, is she argued, that the defendant had deposed in an affidavit in English proceedings that he was not able to retire to Saint Lucia as the claimant did in July 2006. The claimant on the other hand retired in 2006, 5 years after the purchase of the Rodney Bay property.

The defendant's financial position was a mystery since he refused to disclose how he now meets his living expenses, and the evidence is that he owns no property on his own.

The nature of the parties relationship:

It is evident, counsel submitted, that the parties were not planning to have a family together. Indeed they both already had grown children while the defendant still had some minor children. Counsel was of the view that it would not be likely that the claimant would want to support the defendant or give him substantial gifts. Indeed the evidence is that she gave him a ticket to Saint Lucia in return for his emotional support given to her during trying times with 3 of her children.

Whether thy had children to provide for:

Counsel submits that the evidence is that the claimant had no children to provide for while the defendant had 6 children under 16 years of age and one adult child who was attending university. The defendant admitted that he had some financial responsibility for these children. Children were not part of the plan for the Rodney Bay

property, making it unlikely that the parties intended that property to be jointly beneficially owned.

How the purchase was financed:

It is not disputed says counsel that all of the funds save £4,000.00 came from the claimant. The defendant says he contributed funds towards the claimant's mortgage in which her deceased husband once lived at Farmer Road England. His contributions then were made to the claimant. Counsel considers this to be a factor against the defendant. The fact is that there was no house in Saint Lucia to contribute to when the defendant began contributing to the Farmer Road house.

How the parties arranged their finances:

Counsel argued that the evidence is that it is clear that no party had access to the other's bank account and that their finances were kept completely separate. Indeed the defendant did not have full knowledge about the mortgages to which he said he made a contribution.

How they discharged the outgoings on the Rodney Bay property:

Counsel concluded based on the evidence that the defendant was not able to give an indication of any of the outgoings for the Farmer Road house during the time he resided there. Additionally the outgoings for the Rodney Bay property were initially paid from the rental of the property. The claimant bore all the outgoings in the latter period, showing that there was no intention of joint ownership.

Who was responsible for the mortgage:

The claimant alone was responsible for the Farmer Road mortgage and remortgage and the Plevna Crescent mortgage, prior to the purchase in counsel's view.

The Parties individual characteristics:

Counsel describes the claimant as a responsible person who was married with children. She found herself estranged from her husband and later her first three children. The defendant she described as a gambler who lived quite irresponsibly, fathering 9 children from 7 different mothers, suggesting that he did not have to contribute much to their well being because the mothers may have been wealthy. He lived continually on borrowed money, with no assets, no savings and presently no pension which he had cashed in.

Counsel's view was that Mr. Lewis has tried to trick Mrs. De Freitas and part of this was to convince her to put his name on the property. Counsel goes on to speak of the defendant's mercenary nature. But this appears to be more fittingly addressed under the following heading.

Mercenary Reasons:

Gleaned from counsel's submissions it is evident that counsel was of the view that Mr. Lewis has entered into Mrs. De Freitas' life when she was vulnerable and he saw the opportunity to get his hands on the claimant's property for mercenary reasons. He looked into the claimant's personal finances with a view to being compensated for the emotional support that he had in fact given. This must be the reasonable inference since he maintained that he was entitled to a half share of the Rodney Bay property

even if on his own evidence he contributed less than half of the purchase price. He was quick to say in cross-examination however that he was not suggesting that the claimant put his name on the Deed as a gift.

The length of the relationship:

Based on the evidence counsel was of the view that the relationship lasted for four years. For 2 years it was a visiting relationship. Between 2002 and 2007 the parties shared a friendship. But counsel suggests that it can be inferred that they broke up soon after they started living together when Mrs. De Freitas found out about Mr. Lewis' personal affairs, particularly his gambling habit. The real issue here seems to be one of fact which is whether the relationship had ended some time before the claimant retired to the home in Saint Lucia.

Counsel opines that it would have been surprising if the claimant was still in a relationship with the defendant when she retired in 2006 in Saint Lucia while he himself was still hard at work as he did not then have the option to retire. Counsel concluded that this is not how a loving couple behaves. She was of the view, that it was more likely that by this time the parties were just friends.

- [61] Having taken the evidence of both sides into account I find that there is evidence of money paid by Mr. Lewis toward the household expenses at Farmer Road in Leyton, England and £4000.00 directly toward the purchase of the Rodney Bay property in St. Lucia. However Mrs. De Freitas raised most of the down payment, fees and taxes, more than \$70,000.00 and then proceeded to raise the remaining \$400,000.00 on her own.
- [62] It may have been true that a monthly contribution of £600.00 made life easier for Mrs. De Freitas. But Mr. Lewis lived in her house, ate and slept there and must have used amenities there. He did not pay this £600.00 directly to the mortgagee institution, and he seemed not to know what part of it was used for other purposes. His name was not on any mortgage document and he was not legally responsible for paying Mrs. De Freitas mortgages. If Mrs. De Freitas failed to pay the mortgage no-one would pursue him for the payments.
- [63] I do not see how this course of dealings could be considered evidence that the parties would share the interest in the purchase of the Rodney Bay property in equal shares. Based on this evidence Mrs. De Freitas explanation of the entry of both names on the Deed and transfer makes more sense. Furthermore an analysis of the bank account information for both parties provided in Trial Bundle D would seem to suggest that Mrs. De Freitas had a higher income than Mr. Lewis and always held a healthier balance on

her savings account. It would be very strange for a person in this position to offer another person a half share in their purchase of a property based on such a limited contribution, in the absence of an intention of making it a gift on the basis of love and affection. But both parties reject this interpretation of the facts.

The Resulting Trust Argument

- [64] Counsel's additional argument was that, Article 916A of the Civil Code, provided that the law of England applies in St Lucia; and since this section of the law was not ambulatory, the law as it relates to the resulting trust is that which existed in England in 1957 when the Code was revised or 1879 when the Code was enacted. In that regard based on Lord Neuberger's judgement the legal result in Saint Lucia would be the same as that arrived at by Baroness Hale if the resulting trust approach is adopted. Lord Neuberger opined in **Stack v Dowden**:

"where the only additional evidence to the fact the property has been acquired in joint names is the extent of each party's contribution to the purchase price, the beneficial ownership at the time of acquisition will be held, in my view, in the same proportions as the contributions to the purchase price."

- [65] According to counsel Mrs. De Frietas has provided proof that 90% of the purchase price came from her. Mr. Lewis cannot say exactly how much of a contribution he made. She considered the defendant's evidence contradictory and simply did not add up. In that regard, following Lord Neuberger's approach, the court may be in a position where the actual contribution could not be gleaned from the facts, to find that a party could not have contributed more than x% and the other y%, if there is an unequal contribution then the resulting trust solution is the one to be adopted. However this is only a presumption which can be rebutted. To rebut the presumption the evidential burden shifts to the party who claims that there is no resulting trust but an intention that the beneficial interest should follow the legal interest.

- [66] If the presumption is to be displaced by other factors then a factor such as a loving relationship would become relevant. Lord Neuberger observed in that regard,

"For instance, the fact that the parties are in a close and loving relationship would render it easier, than in a normal contractual context, to displace the resulting trust solution with, say, an equal division of the beneficial ownership."

That is because a departure from the resulting trust solution normally involves a gratuitous transfer of value from one party to the other.”

- [67] Counsel submitted that the defendant had dismissed any suggestion of notice of a gratuitous transfer by the claimant by his answer under cross-examination. It is therefore not open to the court to find that this was a gift, (which the defendant's counsel seems impliedly to be arguing).
- [68] Counsel for the claimant dismissed any argument that the contribution to the Rodney Bay property was partly made through contributions to the Plevana Crescent property. Payments to the Plevana Crescent property could not be to a property which was not yet in existence counsel argued. In any event the defendant had stated in his evidence that he never intended that he would be refunded the monies allegedly put towards the Plevana Crescent property.
- [69] Counsel also rejected the argument that Mr. Lewis contributed toward the Farmer Road mortgage. She repeated that Mr. Lewis was almost always broke, gambled and knew nothing about the mortgage to which he allegedly made the contribution, not even the monthly repayment. In conclusion counsel submitted that the defendant contributed nothing to the Farmer Road mortgage and nothing to the balance of the monies for the payments to the Rodney Bay property.
- [70] The final matter addressed by the claimant's counsel is that of the defendant's insinuation that he should be entitled to part of the proceeds of rent collected on the Rodney Bay property. Counsel was of the view that the defendant is unable to prove that rent collected by the defendant and his brother between 2002 and 2006 went to the claimant beyond some work done on a wall fence, and one payment of \$4000.00.
- [71] Counsel also argued that the defendant could not have intended to reside in the Rodney Bay property from 2006 because at that time he was still employed in England and had not yet retired. In summary then the claimant's position is that the defendant is not entitled to any finding that Mrs. De Freitas owes him rent as he did not claim it in a counterclaim.

[72] Counsel further opined that the evidence is that the defendant and his brother had the use and benefit of over \$75,0000 worth of the proceeds of the rent from the Rodney Bay premises. The defendant was not put out of the property. He never lived there. The result is that the defendant had failed to make out a case for an equitable accounting of rent to be rendered for any period whatsoever.

[73] I must note here that the reasoning in **Stack v Dowden** is itself based on a long line of jurisprudence from cases of a similar nature which is reviewed and enriched by Baroness Hale and Lord Neuberger. Baroness Hale had to enrich the discourse because the issue of the intention of the parties had to be analysed in the context of the parties having their respective legal interests recorded as one half shares in the property. The cases reviewed included **Lloyds Bank v Rosset, Grant v Edwards and Stokes v Anderson**.

Estoppel:

[74] Firstly on this issue, I must state that the litigant who argues estoppel should first have pleaded it. Nowhere in the pleadings is there any mention of the word estoppel. Neither is there any other language used which would carry the same meaning. On this ground alone the argument on favour of estoppel fails. However, even if the court were to entertain the argument, there is a response in the law which appropriately addresses the true position in a case such as this.

[75] Counsel wishes to argue that there is estoppel by Deed arising both from the agreement for purchase of the Rodney Bay property and the Register of Title for the said property. However this argument is severely limited. **Wilson v Wilson** 1969 3 All ER 954 is a case which illustrates the limitation.

[76] The facts of **Wilson v Wilson** 1969 3 All ER 954 were that the defendant wished to buy a house with the aid of a building society but, as his earnings fell short of the society's requirements he invited his brother to become a co-purchaser. The transfer contained a declaration by the brother that they held the property on trust for sale for themselves as joint tenants in equity beneficially entitled absolutely. The title was registered in their joint names. Subsequently the brother purported to sever the joint

tenancy and claimed to be entitled to an undivided half-share of the property. The defendant contended that it was the intention of the parties that he should be the sole beneficial owner. He sought to plead that the part of the instrument of transfer dealing with beneficial interests was inserted by mistake and to claim rectification.

[77] In **Wilson v Wilson** Buckley J said,

"The difficulty in this case has arisen from the terms in which the instrument of transfer is expressed, and not from the doctrines of equity relating to constructive trusts; but for the reasons I have indicated, I think in the first place the instrument of transfer ought to be rectified in the way I have indicated notwithstanding the absence of the vendor; and even had I not thought that that was so, I think that as between the parties to this action I could treat the deed as not constituting such an estoppel as to preclude me from looking behind it to discover what the intentions of the parties were, because as between the parties to this action the deed is one which clearly ought to be rectified, so that the parties cannot rely upon it except in the form in which it ought to be rectified either for its direct legal effect or for its effect as an estoppel."

[78] I conclude that the argument for estoppel goes no further than the evidence that the Deed stated the parties held the Rodney Bay property in equal one half shares. Clearly Mrs. De Freitas could not deny that this description of the parties' respective interests was on the Deed of Sale, and she was aware why it was there. The resolution of the matter is to be found in the explanation for stating the legal ownership in this manner on the title Deed of Sale and Land Register. Mrs. De Freitas seeks to explain this with her detailed evidence.

[79] Since estoppel is no more than a rule of evidence, the court cannot ignore the evidence which would tend to rebut the presumption on which the estoppel would be based. Hence if the case does not turn on the evidence of the stated proprietorship alone, that evidence factors only as a matter of weight to be given to the defendant's case and is not conclusive as to the facts of the case as a whole, nor as to the legal conclusions to be derived from them.

[80] It is also important to note that the Defence counsel's reference to section 23 of the Land Registration Act is incomplete. Apart from the part of the section quoted by the defendant's counsel, section 23 also states:

"However-

(i) this section shall not be taken to relieve a proprietor from any duty or obligation to which he or she is subject as a trustee."

This "proviso" puts in issue the matter of trusteeship and any evidence that a person may hold land as a trustee.

Conclusion

[81] I have concluded that this matter should be resolved in the claimant's favour. It is well accepted that the facts are pivotal in the determination of the respective beneficial interests in situations where a party argues that the beneficial interest differs from the legal interest in real property. The defendant relied largely on one fact that the parties went to a lawyer and instructed the lawyer to draft a Deed of Sale in which they recorded that each party should have a one half ($\frac{1}{2}$) share in the property. The actual register of title records the same intention. I also accept that it is only in an unusual case that it could be held that the beneficial interest differs from the legal interest. Indeed I do think that this is an unusual case.

[82] Not unlike the claimant's counsel I believe that it is unusual that in a domestic situation the parties would both agree that there was no gift involved in the process of purchasing and obtaining a register naming both parties on the title for the Rodney Bay property. It is also unusual that in such a context the person who makes the greatest financial input more than (90%) would sign documents of title to land such as a deed of sale which state that the other party enjoys an equal share in the property.

[83] The other unusual factors are that Mrs. De Freitas entered into the relationship obviously for convenience and not necessarily for any long term benefits. But she did expect that Mr. Lewis would contribute to his upkeep while residing at the Farmer Road property in England, toward the purchase of the property in St Lucia. While it is clear on the evidence that Mr. Lewis did make an effort to contribute to Mrs. De Freitas' investment portfolio, it is also clear that it fell well short of the fifty percent (50%) mark. In those circumstances whether the court makes certain presumptions as is advocated in the judgment of Baroness Hale or follows the law of resulting trust pursuant to the reasoning of Lord Neuberger the result would be the same. Mr. Lewis would be found

to hold the greater part of a beneficial one half (½) share of Rodney Bay property in trust for Mrs De Freitas

[84] Based on the analysis provided mainly by counsel for the Mrs. De Freitas, since Mr. Lewis' approach focused mainly on his indirect contributions, I find that Mrs. De Freitas is entitled to 96% beneficial ownership of the Rodney Bay property because in addition to her half share, Mr. Lewis holds 46% beneficial share in trust for Mrs. De Freitas, the remaining 4% being Mr. Lewis' beneficial entitlement based on his contribution. I further order as follows:

- (1) The defendant holds a 46% share in the property registered in the Land Registry of Saint Lucia as Block 1254B1119 in trust for the claimant and beneficial 4% share.
- (2) A permanent injunction is issued to restrain the defendant from entering on the said parcel of land.
- (3) A permanent injunction is ordered restraining the defendant from harassing, threatening, assaulting or otherwise molesting the claimant.
- (4) The parties are to appoint a land surveyor to value the said property to facilitate a refund of the value of Mr. Lewis' 4% ownership of the land to him as promised by Mrs. De Freitas, and Mrs. De Freitas is to refund the said amount as soon as the figure is known.
- (5) The claimant is awarded costs pursuant to part 65 of the CPR 2000.


Francis H V Belle
High Court Judge