

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law & Equity Division**

**2021  
CLE/gen/00442**

**IN THE MATTER OF a Conveyance dated the 30th June 1975 made between British American Bank Limited et al and Zerline Mildred Williams et al. recorded in Volume 2434 at pages 430 to 437.**

**IN THE MATTER OF a Certificate as to a Grant of Probate in the Estate of Yvonne Marie Williams dated the 7th July 2020 to Annischka Holmes-Moncur**

**IN THE MATTER OF a Certificate as to a Grant of Letters of Administration in the Estate of Zerline Mildred Williams dated the 17th December 2020 to Norma Williams**

**BETWEEN**

**ANNISCHKA HOLMES-MONCUR  
(IN HER PERSONAL CAPACITY AND AS EXEUCTOR OF THE ESATE OF YVONNE  
MARIE WILLIAMS)**

**Plaintiff**

**AND**

**NORMA WILLIAMS  
(IN HER PERSONAL CAPACITY AND AS ADMINISTRATOR OF THE ESTATE OF  
ZERLINE MILDRED WILLIAMS)**

**Defendant**

**Before: The Honorable Madam Justice J. Denise Lewis-Johnson  
Appearances: Donovan Gibson for the Plaintiff  
Sharanna Bodie for the Defendant  
Hearing Date: 7 September 2021**

**Land - Equity – Constructive trusts – Common intention – Conduct of parties –  
Tenants in common – Whether the Defendant is entitled to a greater interest in  
land due to the existence of a constructive trust.**

By an Originating Summons filed 4 May 2021, the Plaintiff, as Executor of the estate of the Late Yvonne Marie Williams, commenced this action against the Defendant seeking inter alia, a declaration that she is the fee simple owner of seventy-five percent (75%) interest in the property being:- **“ALL THAT piece parcel or lot of land comprising a part of Oakes Field situate in the Western District of the Island of New Providence known as Stapledon Gardens and being Lot No. 666” (the said property)**”. Alternatively, a declaration that the Defendant is the fee simple owner of twenty-five percent interest in the said property.

The Defendant contends that the plaintiff is not entitled to the reliefs claimed due to the existence of a Constructive Trust operating in relation to the legal title of the property. The Defendant claims that in her personal capacity, she is entitled to ownership of a one-third share of the beneficial interest in the property as the parties listed on the conveyance were not entitled to 100% of the beneficial interest in the property.

## JUDGMENT

**LEWIS-JOHNSON J:**

### **Introduction**

1. The instant matter is a property dispute amongst family members. For ease of reference the parties' relations are as follows: Zerline Williams was the mother of two daughters, Norma Williams and Yvonne Williams. The Plaintiff is the daughter of Yvonne Williams.
2. By an Originating Summons filed 4 May 2021 the Plaintiff seeks the following reliefs:
  - [1] **A Declaration that the plaintiff is the fee simple owner of 75% interest of the property being:- “ALL THAT piece parcel or lot of land comprising a part of Oakes Field situate in the Western District of the Island of New Providence known as Stapledon Gardens and being Lot No. 666” (the said property);**
  - [2] **A Declaration that the Defendant is the fee simple owner of 25% interest in the said property;**
  - [3] **An order that the said property be sold at market value and the net proceeds divided between the Plaintiff and Defendant in accordance with their respective interests;**

**[4] An Order that the Plaintiff be at liberty to purchase the Defendant's 25% interest in the said property at current market value within 21 days or in the alternative;**

**[5] An Order that the Defendant be at liberty to purchase the plaintiff's 75% interest in the said property at current market value within 21 days;**

**[6] Further or other relief; and**

**[7] Costs**

3. An Affidavit sworn by the Plaintiff on 11 May 2021 supports the Originating Summons.

4. The Defendant filed the following Affidavits in opposition to the Plaintiff's application:

**[1] Affidavit of Norma Williams dated 28 July 2021**

**[2] Affidavit of Pedro Quentin Johnson dated 28 July 2021**

**[3] Affidavit of Donna Darville dated 28 July 2021**

**[4] Affidavit of Jouette Emelike David Smith filed 28 July 2021**

### **Background**

5. By a Conveyance dated the 30th June 1975 and recorded in Volume 2434 at pages 430 to 437 ("the conveyance"), Yvonne Marie Williams ("Yvonne") along with Zerline Mildred Williams ("Zerline") purchased the following property from Anthony Adderley:-

**"ALL THAT piece parcel or lot of land comprising a part of Oakes Field situate in the Western District of the Island of New Providence known as Stapledon Gardens and being Lot No. 666" (the said property)**

6. By Clause 7 of the conveyance the said property was conveyed to Yvonne and Zerline to hold in fee simple as tenants in common.

7. In 1975, Norma and her five children along with Yvonne, her five children and Zerline, moved from a house located in Yellow Elder Gardens to the property.

8. Zerline died intestate on 8 September 2010. The Certificate as to Grant of Letters of Administration was granted to the Defendant. At the time of her demise, Zerline was survived by her two daughters, the Defendant and Yvonne.
9. Yvonne died on 11 May 2019 and a Certificate as to Grant of Probate was granted to the Plaintiff on 7 July 2020. By her Will dated 4 December 2014, Yvonne devised her interest in the said property solely to the Plaintiff.
10. The Defendant, her two children and two grandchildren currently reside in the dwelling house situated on the said property and the Plaintiff's access is being restricted.
11. By letter dated 10 September 2020, the Plaintiff's Attorney wrote the Defendant advising that the Plaintiff is entitled to a seventy-five percent (75%) interest in the home.
12. By letter dated 17 September 2020, the Defendant's attorney wrote the Plaintiff indicating that Defendant was willing to meet to resolve the matter.

### **The Issue**

13. Whether the Defendant has acquired an interest in the property pursuant to a constructive trust thus reducing the Plaintiff's legal interest in the property.

### **The Plaintiff's Evidence**

14. The Plaintiff's main contention is that the property was purchased by her mother and grandmother as tenants in common. She stated that Zerline died leaving her interest in the property to her children namely the Defendant and Yvonne. Years later Yvonne died leaving all of her interest in the property to the Plaintiff, in the circumstances she is entitled to 75% interest in the property.
15. The Plaintiff had no other Affidavits sworn on her behalf.

## The Defendant's Evidence

16. The Defendant claims that the Plaintiff has no firsthand knowledge of how the parties acquired the property as the Plaintiff was not yet born, nor any knowledge of how the acquisition costs in relation to the property, specifically the mortgage was satisfied over years. She claims that all three of the women contributed towards the expenses. They discussed the utilities and their payments and decided that because Yvonne was the eldest child they should be held in her name.
17. The Defendant states that in 1981 Yvonne lost her job and the mortgage was left to be shared by her and Zerline until 1982 when the Defendant lost her job. In 1982-1984 Defendant's two eldest sons took over the payment of the mortgage in its entirety.
18. Pedro Quentin Johnson is the son of Yvonne and older brother of the Plaintiff. He gave evidence for the Defendant and stated that the three heads of the home were always Yvonne, the Defendant and Zerline and they collectively shared the responsibilities of taking care of the home and ensuring that all household expenses were paid for. Pedro recalled that they all contributed to the mortgage in relation to the home as well as utility bill payments and other expenses associated with the property. In the absence of Yvonne, the Defendant and Zerline pooling their income and resources, he finds that they would have been unable to retain and reside in the property. He also stated that it was the Defendant who purchased furniture needed for the homestead on the property.
19. Donna Darville, daughter of Yvonne and older sister of the Plaintiff, asserted that all the parties lived as a family unit and weathered the seasons of their lives together. She claims that the women were all the breadwinners. When Zerline could not work anymore the majority of the financial responsibilities of the homestead were then shared by the Defendant and Yvonne.

20. Jouette Smith, son of the Defendant, testified that after Yvonne lost her job, Norma and Zerline were responsible for paying the mortgage (he was 9 at this time). He indicated that Norma and Yvonne would cook food for lunch to sell to construction workers and other individuals employed on Paradise Island. Jouette also stated that he got a loan to assist with maintaining the house. He was also responsible for the payment of the home security alarm bill and cable bill.
21. The Defendant contends that the true division of interest is a one-third share between herself, Zerline and Yvonne and not a fifty-percent share between the latter two.
22. The Defendant submits that the Court should recognize the existence of a constructive trust in the instant case as 'justice and good conscience requires it'. She claims that it would be inequitable to allow the legal owners, as trustees of the beneficial estate in the property, to deny the existence of the Defendant's beneficial interest in the same.

## **The Law**

### *Tenancy in Common*

23. Sampson Owusu in **Commonwealth Caribbean Land Law** defined a tenancy in common as:

**“the form of ownership where each tenant has a distinct, separate and transferable share of the property, and their ownership rights are independent from each other. They will own the property basically as independent owners of land, but it may not be physically divided between the owners. When one of the tenants dies, the property becomes part of his/her estate and will be subject to a probate proceeding.”**

24. According to Gilbert Kodilinye in **Commonwealth Caribbean Property Law** a tenancy in common will arise in the following instances:

- “(a) where land is granted to two or more persons with words of severance (such as, ‘in equal shares’, ‘equally’, ‘to be divided amongst’, ‘shares respectively’);
- (b) where equity treats a joint tenancy at law as a tenancy in common;
- and
- (c) where a joint tenant severs his joint tenancy by alienation, acquisition of a greater interest, agreement or course of dealing.”

### *Constructive Trusts*

25. Deane J, in *Muschinski v Dodd* (160) C.L.R. 583, described the constructive trust as follows: -

“In its basic form the constructive trust was imposed as a personal obligation attaching to property, to enforce the equitable principle that a legal owner should not be permitted to use his common law rights as owner to abuse or subvert the intention which underlay his acquisition and possession of those rights. This was consistent with the traditional concern of equity with substance rather than form. In time, the relationships in which the trust was recognized and enforced to protect actual or presumed intention became standardized and were accepted into conveyance practice...Viewed in its modern context, the constructive trust can properly be described as a remedial institution (and subsequently protects) to preclude the retention or assertion of beneficial ownership of property to the extent that such retention or assertion would be contrary to equitable principle.”

26. The principle of Constructive trusts were expanded on by Lord Diplock in *Gissing v. Gissing* [1971] A.C. 886 e 905:-

“A resulting, implied or constructive trust - and it is unnecessary for present purposes to distinguish between these three classes of trust - is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust

to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land.”

27. Lord Diplock went on to discuss when a trust will arise by operation of law rather than an express declaration of trust:-

“If there has been no discussion and no agreement or understanding as to sharing in the ownership of the house and the husband has never evinced an intention that his wife should have a share, then the crucial question is whether the law will give a share to the wife who has made those contributions without which the house would not have been bought.

I agree that this depends on the law of trust rather than on the law of contract, so the question is under what circumstances does the husband become a trustee for his wife in the absence of any declaration of trust or agreement on his part. It is not disputed that a man can become a trustee without making a declaration of trust or evincing any intention to become a trustee. The facts may impose on him an implied, constructive or resulting trust.”

28. In *Ralph Hall and Louis Hall-Philipps (in their capacity as Personal Representative of the Estate of the late Eltha E. Hall) v. Shaquille Sands* 2017/CLE/gen/693 The Honourable Justice Gregory Hilton stated:

“Matthews J in the case of *Dobson v. Griffey* [2018] EWHC 1117 gave a clear and comprehensive summary of the circumstances where common intention constructive trusts arise and likened their similarity to *Proprietary Estoppel* at paras: 20-24 as follows:

“20. . . For a common intention constructive trust to arise, the parties must have had a common intention to share the property beneficially, upon the faith of which the claimant then acts in reliance to her detriment. The common intention by itself is not enough for the constructive trust to arise. Otherwise s 53(1)(b) of the 1925 Act would be meaningless. It is the detrimental reliance that makes it unconscionable for the defendant landowner to resile from their otherwise unenforceable agreement.



21. But the common intention of the parties may be either expressed between them, as when they have a discussion and reach a conclusion, or it may be inferred from the whole course of conduct between them: see per Lord Bridge in *Lloyds Bank v Rosset* [1991] 1 AC 107, 132. However, even when it is inferred, it still represents the court's conclusion as to what the parties actually intended: see eg. per Lady Hale in *Stack v Dowden* [2007] 2 AC 432, [61]. The court has no power to impute an agreement or common intention to the parties based on what it considers would have been fair or reasonable. I add only that, when the court is considering what the parties actually intended, the court looks at the objective phenomena available for consideration, and not into their minds themselves. The assessment is thus an objective rather than a subjective one: see per Lord Walker and Lady Hale in *Jones v Kernott* [2012] 1 AC 776, [34].

22. Once the common intention is established, the question is whether the conduct of the claimant in relying on the common intention to her detriment makes it unconscionable for the defendant to renege on that agreement: see *Culliford v Thorpe* [2018] EWHC 426 (Ch), [76]. Nowadays there is no doubt that making physical improvements to the land which add significant value to the property can amount to such conduct: see per Lords Hope, Walker and Neuberger in *Stack v Dowden* [2007] 2 AC 432, [12], [36], [139].

23. If such detrimental reliance is established, then the next stage is the quantification of the claimant's share. If that is established by the common intention itself, then there is no need for the court to attempt to quantify it. But in cases where it is clear that the parties intended that the claimant should have a share, but did not quantify it themselves, the court must do so. It does this, once again, by having regard to the whole course of conduct between the parties. But this time, because the parties have not reached an agreement, it is necessary for the court to consider what is fair. Here, at this final stage, the court imputes to the parties that which they did not agree: see per Lord Walker and Lady Hale in *Jones v Kernott* [2012] 1 AC 776, [51]-[52].

24. The doctrine of proprietary estoppel operates in a similar way. First of all the defendant landowner by his words or conduct makes an assurance to or creates an expectation in the claimant. It need not be the promise of a specific right or interest, as long as it is clear enough in all the circumstances: see per Lord Walker in *Thorner v Major* [2009] 1 WLR 776, [29]. At this stage this is not an enforceable obligation. It does not comply with the relevant formalities rules. But, assuming that it is intended to be relied upon by the claimant, and it is relied upon, to her detriment, such that it becomes unconscionable for the defendant to resile from it, an equity is thereby raised against the defendant. The equity thus created is an interest in the property which does not need to comply with any relevant formalities rules, because it operates by way of imposing a trust on the defendant to satisfy it, and constructive trusts are outside the scope of those rules: see the Law of Property Act 1925, s 53(2). The claimant is then entitled to an appropriate remedy to satisfy the equity. This may be an order for the defendant to perform the promise itself. Or it may be something else, perhaps the payment of money by the defendant to the claimant.”

29. When the court is exercising its discretion Chadwick LJ in the case of *Oxley v Hiscock* [2004] 3 All ER 703 states what should be considered:

“In a case where there is no evidence of any discussion between them as to the amount of the share which each was to have—and even in a case where the evidence is that there was no discussion on that point—the question still requires an answer. It must now be accepted that (at least in this court and below) 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. And, in that context, ‘the whole course of dealing between them in relation to the property’ includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home.”

30. Baroness Hale of Richmond in *Stack v. Dowden* [2007] 2 All ER 929 indicates that:

“financial contribution towards the purchase price of the property is not the only factor the Court will consider when deciding whether to

declare the operative of a constructive trust at law. The law recognizes any advice or discussions at the time of acquiring title which cast light on their intentions; the reason why title was taken in one or two names; the purpose for which the home was acquired; the nature of the parties' relationship, whether they had children for whom they both had responsibility to provide a home; how the purchase was financed both initially and subsequently; how the parties arranged their finances (whether separately or together or a bit of both); how they discharged the outgoings on the property and their other household expenses (for example, one party's payment of such expenses and outgoings making it possible for the other to make the mortgage payments)."

### Decision

31. The Plaintiff relies on the existence of a conveyance that transferred the property to Yvonne Williams and Zerline Williams as tenants in common and that tenancy was never severed. She speaks to the nature of a tenancy in common and that there would be an undivided share by the co-owners. The court is however obligated to consider the whole course of dealing between Yvonne Williams, Zerline Williams and the Defendant per **Oxley v. Hiscock**, which also establishes that consideration should also be given to the arrangements made from time to time in order to meet the outgoings such as the mortgage and utilities. Significant evidence was led in this case that the legal owners along with the Defendant pooled resources to pay bills and upkeep the property, and when jobs were lost and one party was unable to contribute to the expenses the others made the payments.

32. With the evidence led the court cannot accept the legal title without considering whether an equitable interest exist.

33. When dealing with the legal title to a property, a constructive trust will arise wherever one party has conducted himself in such a manner that it would be inequitable to allow the other party to deny him as having a beneficial interest in the property acquired.
34. The Court accepts that the names of Zerline and Yvonne on the conveyance is prima facie evidence of their legal ownership. The Defendant must prove on a balance of probabilities that a constructive trust was established and thus exist.
35. As there is no evidence to support a finding of an express agreement between the Zerline Williams, Norma Williams and Yvonne Williams, the Court must rely on the conduct of the parties both as the basis from which to deduce a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust: **See Horace Boswell v Jennifer Johnson [2019] JMSC Civ 19**
36. The Court is tasked with determining whether the evidence advanced by the Defendant can suffice to establish that she and the legal owners of the property acted in such a way that a constructive trust was created, thereby giving the Defendant an equitable interest to the property in Stapledon Gardens. In its deliberation the Court is guided by the considerations laid out in **Stack v. Dowden**. Did the Defendant contribute financially to the purchase price, was there discussions at the time of acquiring the title that they intended to all own beneficially, is there a reason why the Defendant's name was not on the title, the purpose for which the property was acquired, the nature of the parties' relationship.
37. The court accepts the evidence of the Defendant that a common intention existed by the conduct of the parties from 1975 until the deaths of the legal owners that she had an equitable interest. The property was acquired with the common intention that it would provide a home for Zerline, Yvonne, Norma and their children respectively. The evidence shows that the Defendant and the legal owners all arranged their lives and financial affairs in a cooperative manner to the acquisition and retention of the

property. The parties not only shared a home but also managed their individual personal affairs jointly and with the financial support of each other.

38. The Defendant asked the court to note that it was through their collective efforts that they were able to satisfy not only the mortgage debt in relation to the property but also other household expenses. It is her belief that the legal owners during their lifetimes intended for the Defendant to share equally with them as beneficial owners of the property. The court accepts this was the common intention notwithstanding the fact that the Defendant's name was not explicitly placed on the Conveyance. It is noted that the Defendant provided a reason for her name not being on the conveyance, it was due to her having to work albeit the court finds it is not a compelling one.

39. The Defendant's belief that she owned the property equally was the main reason she resided at the property for 46 years and did not seek to invest in an alternative home. Further, she contributed financially with the legal owners and in an undisturbed manner. The Plaintiff led no evidence to explain, respond or deny the Defendant's evidence. I do not believe that the Defendant would remain in a home for 40 plus years, raise her children there and contribute a substantial amount of her income if she did not believe that she had an interest in the home. She acted to her detriment by investing her time and income into this property. She encouraged and allowed her children to invest in this property, clearly because she viewed it as her home and that she had an interest in it. What is equally compelling is that there is no evidence led that the legal owners asked her to leave during her prolonged stay, that they considered her a tenant or otherwise.

40. The court accepts that it was the intention of the parties at the time of the acquisition of the property to equally own the property with the Defendant. Having regard for the evidence before the court, I am of the view that Yvonne, Norma and Zerline had a common intention to share the legal interest in the home.

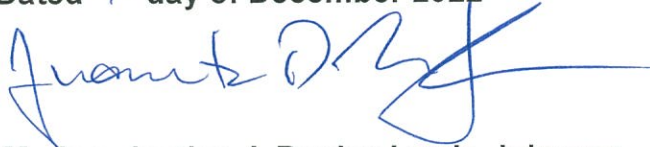
41. The Defendant acted to her detriment when she made significant contributions to the improvement and upkeep of the property. Further, as her kids matured, they also contributed financially to the upkeep of the property. Matthews J, in **Dobson v. Griffey** noted that making physical improvements to the land which add significant value to the property can amount to conduct establishing a constructive trust.
42. The Defendant has raised concerns as to the validity of the late Yvonne Marie Williams' Will, arguing that "the deceased suffered from dementia in her last days which rendered her incapable of understanding the effect that the Will would have in relation to the devise of her Estate specifically her interest in the property".
43. Any concerns with the validity of the Will should have been raised during probate. As no proper application is before this Court in regard to same, I shall make no further comment other than this court recognizes that a grant of probate was made.
44. Having regard to the provisions of the Inheritance Act, 2002 and the Probate and Administration of Estates Act, 2014 Statute Laws of The Bahamas and the laws relating to tenancy in common, Zerline died intestate and thus her interest in the property was to be shared equally between the Plaintiff and the Defendant.

### **Conclusion**

45. Having considered all the evidence led and the applicable law, in all the circumstances of this case, it is inequitable and unconscionable to ignore the contributions made by the Defendant to the subject property. Although the extent of such contributions cannot be quantified, the Defendant has attained an equitable interest in the home.
46. The Defendant has proven, based on the conduct of the legal owners and her conduct, that the ownership of the property should be divided as to one-third interest each to the Defendant, Zerline Williams and Yvonne Williams.
47. The Court finds that:

- [1] A constructive trust existed and was created at the time of purchase of the property located in the Western District of the Island of New Providence known as Stapledon Gardens and being Lot No. 666 in the names of Zerline Williams and Yvonne Williams, as tenants in common. It is declared that the Defendant, Zerline Williams and Yvonne Williams each had one third interest in the said property.
- [2] The Plaintiff has a 50% legal and beneficial interest in the said property;
- [3] The Defendant has a 50% interest in the said property;
- [4] The said property is to be appraised and the cost of same is to be shared between the parties;
- [5] Upon such appraisal the Defendant has the option to purchase the Plaintiff's share in the property;
- [6] Should the Defendant fail to purchase the Plaintiff's share within six months from the date of this ruling, the property is to be sold and the net proceeds divided equally between the Plaintiff and the Defendant.
- [7] Cost to the Defendant to be taxed if not agreed.

Dated 7<sup>th</sup> day of December 2022



**The Hon. Madam Justice J. Denise Lewis-Johnson**