

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2019/CLE/gen/00330

IN THE MATTER OF ALL THAT piece parcel or lot of land situate in the Eastern District of the said Island of New Providence being Lot Number Fifty Five (55) of the Subdivision called and known as “ST. ANDREW’S BEACH ESTATES SUBDIVISION” on the plan of the said Subdivision which said piece parcel or lot of land has such position boundaries marks shape and dimensions as are shown on the plan attached to the Indenture of Conveyance dated 21st September, A.D., 1999 duly recorded in book 7624 pages 361 to 375 in the Registry of Records maintained by the Registrar General of the Commonwealth of the Bahamas being delineated on the pink portion of the said plan

AND IN THE MATTER of the Partition Act (Chapter 153, Statute Laws of the Bahamas 2001)

B E T W E E N:

FRIZZELL ASHTON PARKS

Plaintiff

AND

THERESA MAE CARGILL RAMSEY

Defendant

AND

FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED

Interested Party

Before: **The Hon. Madame Justice J. Denise Lewis - Johnson MBE**

Appearances: Maria Daxon of Counsel for the Plaintiff
Sherita Forbes of Counsel for the Defendant
Raynard Rigby KC with Asha Lewis of Counsel for the Interested Party

Hearing Dates: 7th September 2021; 10th, 11th November 2021; 7th December 2021; 1st February 2022; 9th June 2022; 17th August 2022; 24th January 2023; 27th March 2023; 17th July 2023; 19th October 2023; 5th March 2024; 21st January 2025; 3rd February 2025; 14th February 2025

JUDGMENT

Real Property - Sale of Property and distribution of proceeds - Joint Tenancy - Equitable interest – constructive trust – severance - entitlement to a beneficial interest in the Property - Partition Act-resulting trust

Introduction

1. By an Amended Originating Summons filed on 14th December 2020 supported by an Affidavit of the Plaintiff filed on 9th April 2019 the Plaintiff sought the following reliefs:

“1. A declaration that the Plaintiff’s and the Defendant’s joint tenancy in all that piece parcel or lot of land being lot number Fifty-five (55) of St. Andrew’s Beach Estates Subdivision situate in the Eastern District of the Island of New Providence in the Commonwealth of The Bahamas (“the Property”) is severed in equity.

2. A declaration that the Plaintiff is entitled to Fifty percent (50%) of the equity in the Property.

3. An Order pursuant to Section 12 of the Partition Act that the Plaintiff be at liberty to sell the Property at market value, and that the money arising from such sale be paid as follows:

- i. to pay the balance due and owing on the mortgage in relation to the Property with First Caribbean International Bank (Bahamas) Limited dated 21st December, A.D., 2004;*
- ii. to settle the real estate agent’s fees and all other fees incidental to the sale of the Property; and*
- iii. the balance, if any, to be shared equally between the Plaintiff and the Defendant*

4. An Order that in the event the Defendant fails to execute the conveyance or any other document to facilitate the transfer of title to the Property to the purchaser, the Registrar of the Supreme Court is empowered to do so.

5. An injunction to restrain the Defendant, whether by herself, her agents, servants or otherwise howsoever from interfering with the Plaintiff’s right to possess, occupy, rent and receive rental profits from the Property prior to its sale.

6. That the Defendant be ordered to pay the costs of these proceedings, such costs to be taxed if not agreed.

7. Further or other relief”

2. Frizzell Ashton Parks (“the Plaintiff”) is the eldest child of Theresa Mae Cargill-Ramsey (“the Defendant”). By an Indenture dated 21st September 1999, the Defendant, her late husband, Mr. Philip Alexander Ramsey (“the Deceased”) and the Plaintiff were listed as the purchasers of property being Lot #55 of St. Andrews Beach Estates Subdivision, (hereinafter referred to as the property) from Zenaida Limited, a company duly incorporated under the laws of The Commonwealth of The Bahamas. First Caribbean International Bank (Bahamas) Limited (“the Bank”) filed a Memorandum of Appearance and a Notice of Appearance on 22nd January 2021 in these proceedings as an Interested Party as they hold a mortgage over the property.
3. The Plaintiff brought this action against the Defendant seeking severance of the joint tenancy and a sale of the property. The proceeds of sale are to pay the balance of the mortgage, any real estate agent fees and the remaining to be divided equally between the parties.
4. The Defendant’s case is that the Plaintiff was added to the property’s conveyance for the sole purpose of ensuring that in the event anything happened to her, the Plaintiff and his siblings would have a home. The Defendant contends that the Plaintiff paid no funds towards the purchase price or the mortgage over the Property.

Evidence of the Plaintiff

5. It is the Plaintiff’s evidence that at the “tender age of six”, he was employed as a packing boy at Super Value grocery store. That the income received from his job would be given to his adopted mother, Persis Irene Turnquest (‘Adopted Mother’), who is now deceased, or the Defendant, his biological mother, to deposit into a bank account. That the proceeds from his job as a packing boy were saved for two years and was used as the deposit for the purchase of the property.
6. That at age eight (8) while still employed as a packing boy, around the summer of 1987, the balance of the account to which his earnings were deposited, increased substantially to approximately \$15,000 to \$20,000 (Fifteen to Twenty Thousand dollars). It was at that time that the Defendant advised him that she would be taking him along with her to Zenaida Limited (‘the Vendor’) to purchase property.
7. The Defendant and the Plaintiff executed some documents to purchase the Property. A deposit was required in order to facilitate the purchase and the balance to be paid in monthly instalments. The funds used for the deposit were made from the account into which the Defendant and the Adopted Mother deposited the Plaintiff’s earnings that he received as a packing boy.
8. It is his position that the funds earned from whatever job he held at the time were given to the Defendant and/ or his Adopted Mother to be paid on the balance owed to the Vendor for the Property.

9. The Plaintiff continued to work as a packing boy at Super Value until thirteen (13) years old. At that time, he became employed as a construction site helper at a construction company owned by his adopted uncle and adopted grandfather. The income received from the construction site were given to the Defendant and his Adopted Mother to make payments on the outstanding balance of the Property. At age eighteen (18), the Plaintiff made the final outstanding payment to the Defendant and his Adopted Mother that was due in relation to the Property.
10. He asserted that the Defendant and Mr. Phillip Alexander Ramsey (“the Deceased”) made no contributions towards the purchase price of the Property even though he, the Defendant and the Deceased all signed the Conveyance as joint tenants.
11. Around June 1999, the Defendant asked the Plaintiff to assist her with acquiring a house. The Defendant drove the Plaintiff to the Property and upon arriving, the Plaintiff noticed a concrete structure already built with only the installation of the roof which was left to complete the construction. The Plaintiff was not aware that the Defendant had commenced construction on the Property prior to her taking him there.
12. The Defendant advised that she needed to obtain a loan from the bank to complete construction on the Property. The loan application was signed by all parties and Scotiabank approved a loan in the amount of \$118,000 (One Hundred and Eighteen Thousand dollars) (‘The First Mortgage’).
13. The funding from the First Mortgage produced a three (3) bedroom, two (2) bathroom single family home. The parties were all responsible for the mortgage payments. The Defendant and the Deceased both failed to make the mortgage payments. As a result, the Defendant and the Deceased went to the Bank seeking a further Mortgage. The mortgage was to be used to pay the outstanding debt owed to Scotiabank under the First Mortgage and to build an addition to the structure on the Property.
14. The Plaintiff stated that he did not know about the further mortgage from First Caribbean until the Defendant asked him to attend the bank’s Sandyport Branch. The new loan application was prepared and signed. The parties were approved for a loan in the amount of One Hundred Seventy Five Thousand dollars (\$175,000) (‘the Second Mortgage’).
15. Some of the funds from the Second Mortgage was used to construct two apartment units. It was agreed between the Defendant and the Plaintiff that the rental income from one of the apartment units would go to the Defendant and the rental income from the other apartment to the Plaintiff. Between 2007 and 2009, the Plaintiff allowed the Defendant to collect the rental income from both apartments and to apply the income to the loan payments for the Second Mortgage.
16. In or around 2009 and 2013, the Defendant defaulted on the Second Mortgage’s loan payments which had to be restructured. This resulted in the parties having to sign restructuring agreements. The Plaintiff used his personal resources to bring the Second Mortgage current.

17. Around December 2017, the Defendant defaulted again on the loan payments for the Second Mortgage. It is the Plaintiff's evidence that the Bank contacted him to advise that the Property was designated for foreclosure. The Plaintiff and Defendant spoke with a credit adjuster and was given a deadline to pay the outstanding balance of the arrears of the mortgage, which they paid to avoid foreclosure. The Bank had the Property appraised which it was valued at \$354,000 (Three Hundred Fifty Four Thousand dollars).
18. On or around 1st March 2019, the Plaintiff asserted that he was showing an apartment unit to a prospective tenant the Defendant interrupted the viewing by barging in. The Defendant informed the prospective tenant that the unit wasn't ready for rental. This resulted in an argument between the parties. The Defendant advised the Plaintiff that he had no right to the Property or the units and then called the police to remove the Plaintiff from the Property.
19. On 5th April 2019, the Plaintiff enquired as to the outstanding balance on the Second Mortgage. The balance is currently \$114,956.85 (One Hundred Fourteen Thousand Nine Hundred Fifty Six dollars and Eight Five cents).

Evidence of the Defendant

20. The Defendant was employed as a maid at Paradise Island Resort and Casino, now known as Atlantis Paradise Island, since December 1981. She earned, at the time, approximately \$219.00 (Two Hundred Nineteen dollars) per week. She currently earns a biweekly salary of \$1,400.00 (One Thousand Four Hundred dollars).
21. The Defendant contacted Frank Carey Real Estate, sometime in October or November 1997, for the purpose of purchasing a piece of the Property. The down payment for the lot was \$2,100.00 (Two Thousand One Hundred dollars) which she paid directly to Frank Real Estate Company from her savings.
22. After the initial deposit was made, the Defendant paid Zenaida Limited until she obtained a mortgage at Scotiabank.
23. The Defendant decided to have her eldest child, the Plaintiff's, name placed on the conveyance in addition to the Deceased. The Plaintiff's name was added to the Indenture in the event of the Defendant's demise, the Plaintiff and his sister would have a home. It is the Defendant's evidence that the Plaintiff never paid a dime towards the down payment or the mortgage which were obtained to build the home or the additions to the Property.
24. According to the Defendant, the Plaintiff was never a packing boy at age 6. A search of Super Value Food Stores Limited database revealed no information that the Plaintiff ever worked for the establishment. By a letter dated 10th February 2022, which was exhibited to the Defendant's Affidavit, Super Value stated that hiring a six year old to work at their establishment as a packing boy is implausible.

25. The Plaintiff commenced working at age 18 at a Steel Company. Any salary he made during his employment, he was allowed to keep. The Deceased and the Defendant began building a three bedroom, two-bathroom house on the Property out of pocket. She joined large "asues" at work to pay for the Property's construction.
26. The Plaintiff attended Scotiabank with the Deceased and the Defendant to obtain the loan. The Defendant ensured that the Plaintiff was well aware of what was being done ahead of time. The Bank was having a mortgage drive sometime in 2004 and they were offering better rates at the time than Scotiabank. In October 2004, the Deceased and the Defendant approached the Bank to secure financing for the purpose of making additions to the house to make it an income generating property prior to retirement. The Plaintiff was the guarantor.
27. The parties obtained a mortgage in the sum of \$175,000.00 (One Hundred Seventy-Five Thousand dollars). The monthly payment on the mortgage is \$1,408.27 (One Thousand Four Hundred and Eight dollars and Twenty-Seven cents).
28. The Defendant paid the mortgage by salary deduction in the amount of \$366.00 (Three Hundred Sixty-Six dollars). Payments were also being made over the counter as well to make up any shortfall due to the hotel's occupancy.
29. There was no agreement between the Plaintiff and the Defendant regarding him receiving any rental income from the Property at any time when the mortgage was obtained. The mortgage fell into arrears in 2009 when the Defendant became ill and was hospitalized. She was home for four months. During that time, the Defendant contacted the Bank and advised them that she would bring the mortgage payments current once she was well. She paid the sums due until the amount was completely paid in full. Copies of receipts for payment of the mortgage were exhibited in her Affidavit. The Plaintiff did not pay any monies on the mortgage.
30. She recalled an incident that occurred on the Property between her and the Plaintiff. Sometime around 1st March 2019, the Plaintiff came to the apartment with an unknown person. She informed the Plaintiff that she had arranged for the apartment to be repaired and did not need any assistance from him. The Plaintiff began shouting at her stating that the house belonged to him and not her. He proceeded to use some tool or instrument and destroyed the hurricane proof lock and also started damaging the counter top in the kitchen, damaged the porch, ceramic pots along the walkway, and other property damage. He also threatened to burn the house down and kill everyone inside. She then proceeded to call the police.
31. It is the Defendant's evidence that the Deceased paid monies on the mortgage monthly over the counter until he died. The Defendant would like to have the Plaintiff's name removed from the conveyance as he is not entitled to receive any benefit from the Property.

Evidence of Garth McDonald

32. An Affidavit of Garth McDonald was filed on 3rd March 2021. In his Affidavit, Mr. McDonald stated that he is a Senior Manager in the Recoveries Department of First Caribbean International Bank (Bahamas) Limited.
33. He confirmed that both the Plaintiff and the Respondent are customers of the Bank. By a facility letter dated 1st November 2004, the sum of \$175,000.00 was borrowed from the Bank. A further facility was extended to the Defendant of which the Plaintiff was acting as Guarantor on 28th October 2009. The Property was used as security to the Bank.
34. As of 8th February 2021, the total sum outstanding on the mortgage is \$115,874.05 of which \$2,616.58 represents the interest. By an Appraisal dated 3rd January 2018 by Isle of Freedom (Eleuthera) Realty Ltd, the current value of the Property is \$354,000.00 which is sufficient to settle the outstanding balance to the Bank.
35. Based on the application that is before the court and the desire of the Plaintiff to have the Property sold, the Bank is not opposed to the sale so long as the Bank is able to recover the full amount that is owed.

Evidence of Lakeisha Parks

36. Lakeisha Parks is the wife of the Plaintiff and the daughter-in-law of the Defendant. In early 2006, the Plaintiff asked the Defendant if she would allow him and his wife to move into one of the units rent free so that he could start his own business, A Terrell's Towing Services ("the business"). The Defendant agreed to the Plaintiff and his wife moving into the first unit rent free.
37. Mrs. Parks claims that the Plaintiff never paid the Defendant any money or made any contributions towards the utility bills or the mortgage while they lived in the unit. In fact, the mortgage was paid solely by the Defendant. Under cross examination, Mrs. Parks stated that the Plaintiff never told her that he packed groceries as a child.
38. In mid-2006, the Defendant portioned off her master bedroom and constructed a one-bedroom efficiency to generate more revenue. In early 2007, Ms. Parks moved into the main house with the Defendant due to the Plaintiff not coming home. The Plaintiff also moved into the main house at the request of the Defendant in order for the unit to be rented to generate more revenue.

39. Even after moving into the main house, the Defendant still did not ask the Plaintiff or Ms. Parks for any funds for the bills and the Plaintiff never gave her any funds. The Defendant continued to pay all of the utilities and other expenses.
40. Ms. Parks averred that she did the bookkeeping for the business which earned on average around \$3,000.00 (Three Thousand dollars) per month. According to Ms. Parks, the Defendant invested into the wellbeing of the Plaintiff, Ms. Parks and her grandson. In her view, the Defendant indirectly invested in the business by covering its bills while it was in its infancy.

Issues

- a) Whether the joint tenancy created in the conveyance was severed in equity?
- b) Is the Plaintiff entitled to an equitable interest in the property?
- c) Whether the property ought to be partitioned and or sold?

Decision

41. By an Indenture dated 21st September 1999, the Plaintiff, the Defendant and the Deceased held the property as joint tenants. The Deceased died and his interest in the property vested in the two remaining joint tenant by operation of the law of survivorship. The Plaintiff, in his application stated that the joint tenancy was severed in equity when the Defendant had the police to remove him from the property and this act of exclusion from the property intentionally disrupted the unities of title, interest and possession.
42. The first relief sort by the Plaintiff was a declaration of joint tenancy by the parties in Lot Number Fifty-five (55) of St. Andrew's Beach Estates Subdivision and that it be severed in equity.
43. A joint tenancy cannot be severed in law but it can be severed in equity. Page Wood V-C in **Williams v Hensman (1861) 1 John & H at 558** said:

"A joint-tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share ... Secondly, a joint-tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been effected, as happened in the cases of Wilson v. Bell and Jackson v. Jackson."

44. According to Halsbury's Laws of England/Real Property and Registration (Volume 87 (2017)), a joint tenancy can be severed by any tenant, by either a notice in writing or by doing acts that would in effect sever the tenancy in equity. It is the Plaintiff's submission that the Defendant severed the joint tenancy when she excluded him from the Property. This act destroyed the continuity of the unities of title, interest and possession.
45. The Defendant admitted to calling the police to have the Plaintiff removed from the property because he was destroying the hurricane proof lock on the unit door and he started damaging the counter top in the kitchen, the porch and ceramic pots along with walkway and causing other property damage. The Plaintiff also threatened to burn the house down and murder everyone inside. Considering the ways in which a joint tenancy can be severed in equity, the Court finds that the Defendant severed the tenancy. In the case of **Burgess v Rawnsley [1975] 3 All ER 142**, Lord Denning MR referred to the case of Williams v Hensman and opined:

"In that passage Page Wood V-C distinguished between severance 'by mutual agreement' and severance by a 'course of dealing'. That shows that a 'course of dealing' need not amount to an agreement, expressed or implied, for severance. It is sufficient if there is a course of dealing in which one party makes clear to the other that he desires that their shares should no longer be held jointly but be held in common. I emphasize that it must be made clear to the other party. Similarly it is sufficient if both parties enter on a course of dealing which evinces an intention by both of them that their shares shall henceforth be held in common and not jointly... I come now to the question of notice. Suppose that one party gives a notice in writing to the other saying that he desires to sever the joint tenancy. Is that sufficient to effect a severance? I think it is."

46. While the Defendant did not give notice in writing to the Plaintiff of her severing the joint tenancy, the court accepts that the Defendant through her actions severed the joint tenancy. This was done by her action such as claiming that the Plaintiff had no interest in the property, preventing him access to the property and having the Royal Bahamas Police Force remove him from the Property. The parties agree that the joint tenancy was severed.

A declaration that the Plaintiff is entitled to Fifty percent (50%) of the equity in the Property.

47. As the Plaintiff and the Defendant are named on the conveyance, it is presumed that they are both entitled to the legal and equitable interest in the Property. In **Marr v Collie [2017] UKPC 17**, a Privy Council decision, reference was made to paragraphs 13 and 14 to the Bahamas Court of Appeal judgment regarding ownership of property:

"13. The authorities are clear, where parties are said to own property jointly, the beneficial interest is presumed to correspond to the legal interests in that land, as reflected in the maxim 'equity follows the law'. The presumption, however, may be displaced or rebutted by evidence that the purchase money was provided by the co-owners in unequal shares, in which case a presumption of resulting trust for

themselves as tenants in common in proportions in which they contributed the purchase money replaces the presumption that the legal and equitable title coincide. Where however, a person purchases property in his name and another's name jointly, and provides all of the purchase money, the question is whether the other person, who did not provide any of the purchase money, acquires a beneficial interest in the property.

14. The aforementioned authorities clearly suggest that the answer to that question depends on the intention of the purchaser who provided the purchase money at the time of the purchase of the property. The presumption of a resulting trust will be negated by clear evidence that it was the intention of the purchaser, at the time of the purchase, to share the beneficial interest in the property with his co-owner."

48. The Plaintiff claims that upon severance of the joint tenancy the parties are entitled to equal beneficial interests and thus an equal share of the property's sale proceeds, he relied on the case of **Goodman v Gallant [1986] Fam. 106 at page 108.**
49. The Defendant however relies on the case of **Gissing v Gissing [1971] AC 881** which indicates that a party who acts upon a common intention would gain a beneficial ownership in property purchased either in one party or both party names. The court accepts that while the property was purchased in both party's names there was no common intent that the Plaintiff would gain a beneficial interest in the property but that he would hold in trust for the benefit of his minor sibling should the Defendant die. It is to be noted that at the time of the conveyance the Plaintiff was 12 and 19 years older than his other siblings.
50. The court gave weight to the relationship between the parties, that is, the Plaintiff /son and Defendant/mother. Where such familial ties exist involving parents and children the intention of the parties can impact the nature of interest held by the parties. The Plaintiff asserts that the property is held in trust by the Plaintiff from the beginning based solely on the intention of the Defendant to ensure that the Plaintiff would hold the property to ensure that his younger siblings "would always have a roof over their heads".
51. The Plaintiff further claims his entitlement to a 50% interest in the property by virtue of his contribution to the purchase of the property and his mortgage payments. The Plaintiff's evidence is that from the age of 6-8 he worked as a packing boy at Super Value and he gave his tips to his adopted mother and the Defendant to deposit into an account and this was used for the deposit of \$2,100.00 on the purchase of the property. He further alleges that by age 8 the balance in the account was between \$15,000.00 and \$20,000.00. That at age 13 he started working as a helper on a construction site and by age 18 he made the final payment of the property. The court rejects this evidence of the Plaintiff as untruthful and extremely unlikely.
52. I do not accept that a 6, 7 or 8-year-old was employed as a packing boy and even if he were, that from 1987-1989 based on tips alone he was capable of saving \$2,100.00. I accept the evidence of Super Value that they would not have hired a 6-year-old and that their database has no evidence of the Plaintiff ever working for them. The date that the Plaintiff

stated he worked at Prince Charles Super Value, the store did not exist. I also reject that the Plaintiff made the final payment on the purchase of the property at age 18, the Plaintiff was a child in school up to this point, therefore only capable of working part time and during school holidays, no doubt he would have spent some of his earnings on his childlike desires. His evidence is simply not truthful, partake or believable. The Plaintiff provided no proof of his alleged contribution to the purchase of the property; no receipts, no deposit slips, no bank transfers, no cheques, there is no evidence of his financial contributions only his assertions.

53. The Defendant provided evidence of bank records showing regular salary deductions to pay the mortgage. The Court accepts the evidence of the Defendant and that of Lakeisha Parks that the Defendant paid the mortgage, maintained the property and paid the household expenses. While the Plaintiff was involved when the Defendant arranged to pay off arrears, his name was on the mortgage as it was on the conveyance, there is no evidence he contributed financially.
54. By the Plaintiff's evidence he acknowledged that he had not visited the property for a while and in 1999 when he was taken there that the Defendant had the house up to belt course and "only the roof was needed". The Plaintiff did not assert a contribution by him to this construction and accepted that it was done by the Defendant and her deceased husband.
55. The Court also accepts the evidence of Lakeisha Parks that they (her and the Plaintiff) asked the Defendant to move into and live rent free in one of the apartments so the Plaintiff could start his-business. The act of seeking permission to move in, acknowledges the Defendant ownership and total control of the property. One would not ask permission to move into a property that he owns jointly.
56. The Defendant relied on the case of **Stack v Dowden [2007] 2 WLR 831 (H.L.)** which held that when property is purchased jointly that all parties hold an equal share. "However, the presumption that the legal owners are entitled to share the value equally is capable of being rebutted by evidence to the contrary. Evidence such as whether the title was to be held in trust or an examination of the contributions that each party made towards the purchase price of the home, its upkeep and improvement." The court accepts this argument of the Defendant.
57. Baroness Hale in **Stack v Dowden** said when determining if a constructive trust exist, consideration must be given to any discussions between the parties at the time of purchase, "*time of the transfer which cast light upon their intentions; the reasons why the home was acquired in their joint names, the nature of their relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both the initial purchase price and the subsequent mortgage payments; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged their household expenses.*" The conduct and contributions of the parties must be considered to ground a beneficial interest in the property and based on the facts and evidence before this court the Plaintiff has not succeeded in proving intent, conduct or contribution.

58. The Court finds that the Plaintiff did not contribute to the property's down payment, purchase price or mortgage payments and therefore was not induced to act to his detriment and does not have a 50% interest in the property. The Plaintiff relied on the findings of Winder J as he then was in **Bodie and another v. Storr (Administratrix of the estate of Joseph Alexander Storr) [2017] 2 BHS J. No.94** on constructive trust where he stated:-

“According to the learned authors of Hanbury & Martin Modern Equity (20thed), a constructive trust is one which arises by operation of law and not by reason of the intention of the parties, expressed or implied. The principle, they say, is that where a person who holds property in circumstances in which in equity and good conscience it should be held or enjoyed by another, he will be compelled to hold the property on trust for that other. (See Soar v Ashwell [1893] 2 QB390) A constructive trust is said to arise where, in the absence of a declaration of trust, the trustee has induced another to act to their detriment in the belief that if they do so they would acquire a beneficial interest in the land. See: Gissing v Gissing 119711 AC 881.

59. As an adult the Plaintiff may have assisted his mother occasionally when she fell short on mortgage payments. However, I do not find that at the time it was done there was a belief or intent on the part of the Plaintiff or the Defendant that the Plaintiff was acquiring an interest in the property.

60. In this case, equity and good conscience would not allow the Plaintiff to enjoy that which he did not contribute to the detriment of the Defendant. The Plaintiff was neither induced to act, nor was he led to believe he would receive a beneficial interest. The Plaintiff did not act by contributing financially and he was aware that his name was placed on the conveyance for the protection of his siblings. The Defendant has demonstrated that joint legal title did not and should not be attributed to this case. The Plaintiff argued that the Defendant severed the joint tenancy. Therefore, to order a severance or sale of the property would be unfair to the Defendant and a denial of her enjoyment of the property and to provide the Plaintiff with an unjust inequitable enrichment.

An Order pursuant to Section 12 of the Partition Act that the Plaintiff be at liberty to sell the Property at market value, and that the money arising from such sale be paid as follows:

- i. to pay the balance due and owing on the mortgage in relation to the Property with First Caribbean International Bank (Bahamas) Limited (“the Bank”) dated 21st December, A.D., 2004;*
- ii. to settle the real estate agent’s fees and all other fees incidental to the sale of the Property; and*
- iii. the balance, if any, to be shared equally between the Plaintiff and the Defendant*

61. The Partition Act gives the court jurisdiction to partition or sell property. It is agreed that joint tenants have an equal share in the debts that encumbers the property and Section 3 of

the Partition Act provides that a court may consider on an application for sale of property, the nature of the property, the number of parties interested, the absence or disability or any other circumstances. However, based on the Court's findings above the Court will not order the partition and or sale of the property.

An Order that in the event the Defendant fails to execute the conveyance or any other document to facilitate the transfer of title to the Property to the purchaser, the Registrar of the Supreme Court is empowered to do so.

62. Section 28 of the Supreme Court Act allows the court to grant this relief sought by the Plaintiff. This section provides:

“28. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for the purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”

63. As the Court found that the property belongs solely to the Defendant, should the Plaintiff refuse to cooperate in executing a conveyance transferring the property to the Defendant solely then the Registrar is authorized to execute the conveyance in his stead.

An injunction to restrain the Defendant, whether by herself, her agents, servants or otherwise howsoever from interfering with the Plaintiff's right to possess, occupy, rent and receive rental profits from the Property prior to its sale.

64. Based on the Court's findings above there is no need for an injunction against the Defendant.

65. The Interested Party does not oppose the Plaintiff's application for a sale of the Property as long as the court allows it to be involved in sale process and that the purchase price is sufficient to settle the mortgage debt. The Bank relied on the Affidavit of Garth McDonald filed on 3rd March 2021.

66. Further, the market value of the Property exceeds the amount owed to the Bank, therefore the Bank would not be prejudiced by a court ordered sale. The mortgage is being serviced and should there be a default the Interested Party has remedies available to it. They will not be prejudiced by the Courts findings.

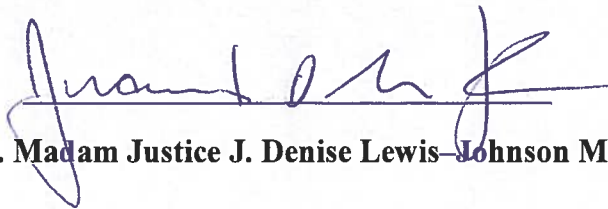
67. The Court observed the demeanor of the witness and found that the Plaintiff was not a credible witness. It is important to reiterate, that I do not accept that the Plaintiff worked as a packing boy from the age of 6 to 8 and earned enough money to pay the deposit on the purchase of the property. I do not accept that Super Value allowed a 6 year old to be a packing boy or that there was a salary attached to such a role other than voluntary tips from customers. This argument which is the foundation of the Plaintiff's claim, I find implausible and at best a gross exaggeration. I have considered what would be the daily hours that a six year old would work, and how much would he earn in tips. I do not accept that at the age of 8 the Plaintiff had the mental capacity to understand the nature of a conveyancing transaction, to engage the professionals need to commence and complete the transaction, or the ability to identify, locate and attend to the business of purchasing property. There is no evidence before this court to support the Plaintiff's assertions

Conclusion

68. Having watched the demeanor of the witnesses, considered the relevant laws and the evidence, the court finds as follows:

- a) That the Plaintiff and Defendant's joint tenancy in Lot Number Fifty-five (55) of St. Andrews Beach Estates Subdivision is severed in equity;
- b) That the Defendant is the sole fee simple owner of the said Property and entitled to the equitable interest in it;
- c) That the said property is not to be partitioned or sold;
- d) That the Plaintiff is not entitled to an equitable interest in the Property;
- e) That should the Plaintiff fail and or refuse to execute the conveyance transferring the property solely to the Defendant the Registrar is authorized to execute the conveyance in his stead
- f) That there is no need for an injunction;
- g) Costs to the Defendant to be taxed if not agreed.

Dated the 30th day of January, A.D., 2026



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