

COMMONWEALTH OF THE BAHAMAS

2010

IN THE SUPREME COURT

CLE/gen/00448

Common Law Equity Division

B E T W E E N

TERRY K. MARR

Plaintiff

AND

BRYANT O. COLLIE

Defendant

Before The Hon. Mr. Justice Neil Brathwaite

Appearances: N. Leroy Smith for the Plaintiff

Donovan Gibson for the Defendant

Date of Hearing: 27th January 2022

DECISION

1. In this matter the parties lived together in an intimate relationship from June 1994 to February 2009. For part of that time they lived in rented accommodations, but moved in 2004 to a home in South Westridge. The relationship ended acrimoniously in 2009.
2. During the relationship, they acquired numerous parcels of real estate in New Providence and Eleuthera, as well as a quantity of art work, a truck, and a boat, some in both names and some in the name of the Plaintiff. The Plaintiff provided all of the purchase money for the real and personal property, and at the end of the relationship commenced an action in the Supreme Court claiming to be the sole legal and beneficial owner of the properties, artwork, truck, and boat. The Defendant instead asserted that all assets were held equally by the parties.

3. The matter was tried before Stephen Isaacs J (as he then was), who decided the matter in favor of the Plaintiff, and held that the beneficial interest in the various properties held in the names of both parties vested solely in the Plaintiff, as well as the truck and boat, the various artworks, and the South Westridge property.
4. The decision of Isaacs J was appealed to the Court of Appeal, which reversed the decision of the court of first instance, ruling instead that the properties in both names had been purchased as investment properties, and that the parties each held a legal interest in those properties as tenants in common. The findings of the learned trial judge with respect to the South Westridge property and the art work were not disturbed, while the Court of Appeal further ruled that the truck be sold with the proceeds split between the parties, and the boat be sold with 70% of the proceeds to the Respondent Marr and 30% to the Appellant Collie.
5. That decision was in turn appealed to the Privy Council, which held that there had not been a sufficient examination of the question of the intention of the parties with respect to the beneficial interests in the various properties by either the trial court or the Court of Appeal, and remitted the matter to the Supreme Court to determine the question of the intention of the parties at the time of acquisition of the properties, and in the course of dealing with those properties.
6. In considering how to deal with the remitted issue, it was decided that rather than conduct a complete retrial, the best course would be to have the court consider the evidence that had already been lead in the first trial, as well as any evidence with respect to matters which may have transpired after that trial. The parties were therefore at liberty to adduce evidence to that extent, and to cross-examine on that evidence. It must also be noted that the disposition of the South Westridge property, as well as the art works, was not disturbed by the appellate courts. The real and personal properties which are the subject of the remitted hearing are therefore as follows:
 - (i) the Dean's Lane Property (Lots 32. 33. 34. 35, 36 and 42, Dean's Lane)
 - (ii) Lot No. 38 Block 3, Section A, Rainbow Bay Subdivision (Eleuthera)
 - (iii) Lot No. 39 Block 3, Section A, Rainbow Bay Subdivision (Eleuthera)
 - (iv) Unit C-53 at Town Court Condominiums
 - (v) Unit No. 101 at Hampton Ridge Condominiums
 - (vi) 2007 Ford Sport Trac
 - (vii) 2008 Seaswirl 2101 W/A motorboat
7. The Dean's Lane property was purchased in 2000 in both names, with Marr, who was by profession a banker, providing the initial outlay, and the balance provided by a mortgage, which both were liable to repay. That loan was refinanced by a US dollar loan from RBC to Marr alone, as the Defendant could not obtain approval for a foreign currency loan. Thereafter the Plaintiff alone was liable to repay that loan, and made all the payments. The Plaintiff testified that this property was purchased as an investment property, with the expectation that the Defendant would make equal financial contributions, which never materialized. The Plaintiff

further testified that the Defendant, who was a contractor, did perform some construction work at the site, which was paid for by the Plaintiff.

8. The Rainbow Bay properties were purchased in 2005 and 2006 in both names with the Plaintiff again providing all of the funds used for the purchases. According to the Plaintiff, the intention was for cottages to be constructed on those sites as investments, with the Defendant carrying out the construction work. Those cottages were never built.
9. The Town Court condominium was purchased in 2008 in both names, with the Plaintiff again providing all of the funds for the purchase. The Defendant carried out some renovation work at that site, which the Plaintiff claims to have also financed.
10. The Hampton Ridge property was purchased in 2000 in both names, with the Plaintiff again providing all of the funds for that purchase.
11. The 2007 Ford Sport Trac was also purchased in both names, with the Plaintiff providing all of the funds for the purchase, while the 2008 Seaswirl boat was purchased in the name of Collie alone, with the Plaintiff claiming to have provided all of the funds for that purchase.
12. The evidence in this case is that the parties lived in what was described as a committed relationship. The nature of that relationship was confirmed by Ricardo Russell, a friend of the parties, as well as Demetrius Armbrister. Marr was the major earner, but testified that he was not the breadwinner. He instead described himself as a saver, and indeed stated that he did not sign up to be a sugar daddy, and never agreed to bear financial responsibility for Collie, nor did they have joint finances. Marr further testified that he chastised Collie several times for not pulling his weight.
13. In contrast, Collie stated in his witness statement that at no time was there ever a discussion of who owned what in the relationship, or of the proportionate value of any contribution, and that the view of the parties was "what is yours is mine, and what is mine is yours." According to Collie, this position was exemplified by the execution of a Last Will and Testament so as not to disenfranchise each other if anything happened. Collie further asserts that the truck and boat were gifts to him by the Plaintiff.
14. Collie also proffered a Supplemental Witness Statement, to which the Plaintiff took objection, as the court had ordered that new evidence be restricted to events which transpired after the trial. In that Supplemental Witness Statement, Collie again references the entirety of the relationship, and reiterates that throughout the relationship there was no separation of assets, and no consideration of the amounts to be invested by each party in the assets being acquired by the parties.

THE PLAINTIFF'S CASE

15. The Plaintiff's case is that while Marr and Collie never specifically discussed the manner in which the beneficial interest in the investment properties would be held, they agreed to work together in partnership on the understanding that Collie would make at least an equal contribution in respect of investments, and that in allowing the properties to be conveyed into joint names, Marr relied upon Collie's assurances that he would be an equal contributor. No formal document was ever drawn up recording this arrangement. They suggest that in his dealings with Collie, Marr frequently applied business principles, as evidenced by his paying Collie for the construction of the Westridge home, and by keeping meticulous records of his dealings.
16. The Plaintiff submits that, having regard to the manner of acquisition of the properties, and the parties' dealings with the properties, Marr should be held to be the sole beneficial owner of the properties under either a purchase money resulting trust or a common intention constructive trust, and that it would be inequitable and unconscionable in the circumstances for Collie to assert any legal interest in the properties, as Marr extended himself financially to great detriment on the expectation that his investments would be matched by Collie, which did not materialize.
17. With respect to the truck and boat, the Plaintiff submits that there is no evidence with respect to a common intention, and that Marr's evidence is that he did not intend these items to be gifts to Collie. In the circumstances, they submit that Marr should be held to have the full beneficial interest in these items, as the evidence is that he alone provided the finances to acquire them.
18. The Plaintiff cites Lewin on Trusts (20th edn) at paragraph [10-052] which states as follows:

“Where there is a dispute about the beneficial ownership of property, the first question must always be whether there is a valid declaration of trust governing the issue. If so, it will be determinative. If not, and the dispute arises in respect of cohabitating parties, then the issue is whether there is an express or inferred common intention of those parties as to the beneficial ownership of the property. It is now clear that the constructive trust imposed to give effect to such a common intention is properly characterized as a constructive trust. In most instances, therefore, no recourse will be necessary to the principles of resulting trusts. There is still some scope, however, for a resulting trust in those cases arising outside of the domestic consumer context, for instance where property is acquired with an investment with more than one contributing to the purchase price. What is said in this section applies to all forms of property, whether real or personal, except money in joint bank accounts. Since special considerations apply to this form of property it is considered separately, in the next section”

19. In addressing the issue of the effect of a lack of a clear declaration of the intentions of the parties, the Plaintiff submits that in such circumstances the court may presume that the person

who supplied the purchase money did not intend to benefit the second party, in which case a purchase money resulting trust may be implied, which relates to both real and personal property (see *Dyer v Dyer* [1775-1802] All ER Rep 20), and cite *Lavelle v Lavelle* [2004] EWCA Civ 223, where Lord Phillips MR said at paragraphs [13] to [14]:

“[13] Where one person, A, transfers the legal title of a property that he owns or purchases to another, B, without receipt of any consideration, the effect will depend on his intention. If he intends to transfer the beneficial interest in the property to B, the transaction will take effect as a gift and A will lose all interest in the property. If he intends to retain the beneficial interest for himself, A will take the legal interest but will hold the property in trust for A.

[14] Normally there will be evidence of the intention with which a transfer is made. Where there is not, the law applies presumptions. Where there is no close relationship between A and B, there will be a presumption that A does not intend to part with the beneficial interest in the property and B will take the legal title under a resultant trust for A. Where, however, there is a close relationship between A and B, such as father and child, a presumption of advancement will apply. The implication will be that A intended to give the beneficial interest in the property to B and the transaction will take effect accordingly.”

20. The Plaintiff also cites *Lau Siew Kim v Yeo Guan Chye Terence and Another* [2008] 4 LRC 587, at paragraph 36 and 37 as follows:

“[36] The presumption of resulting trust is based on a traditional common-sense presumption that, outside of certain relationships, an owner of property never intends to make a gift, and, by extension, that a person who provides the money required to purchase a property intends to obtain an equivalent equitable interest in the property acquired. Equity, with its superbly realistic grasp of human motivations, 'assumes bargains, and not gifts' (per Spence J (Supreme Court of Canada) in *Goodfriend v Goodfriend* (1972) 22 DLR (3d) 699 at 703 quoting in turn from an article by Professor Donovan Waters entitled 'The Doctrine of Resulting Trusts in Common Law Canada' (1970) 16 McGill LJ 187 at 199). In the normal course of events, persons who expend large sums in the context of a purchase of land 'do not harbour particularly altruistic intentions, but really expect, regardless of the destination of the legal title purchased, to derive a beneficial return from their investment in the form of an aliquot share of the equity. [The] [r]esulting trust doctrine ensures a default position which gives effect to this expectation': see *Gray & Gray Elements of Land Law* (4th edn, 2005), para 10.12. The presumption of resulting trust is about the intentions of property owners and, as may be distilled by the

analysis in para [35], above, it is rebuttable by evidence of a contrary intention. Lord Upjohn commented in *Vandervell v Inland Revenue Comrs* [1967] 1 All ER 1 at 8:

'In reality the so-called presumption of a resulting trust is no more than a long stop to provide the answer when the relevant facts and circumstances fail to yield a solution.'

'Trusts are neither created nor implied by law to defeat the intentions of donors or settlors; they are created or implied or are held to result in favour of donors or settlors in order to carry out and give effect to their true intentions, expressed or implied.'

[37] It is therefore clear, from this jurisprudential analysis, that the presumption of resulting trust is an inference or even an estimate as to what a party's intention is likely to be, based on certain assumptions arising from a set of given facts. It stems from a rationalisation of human behaviour derived, in turn, from common experience and the societal climate..."

21. With respect to a constructive intention trust, the Plaintiff begins by citing **Lewin on Trusts (20th edn) at paragraph [10-062]** as follows:

"...A constructive trust arises in connection with the acquisition by one party of a legal title to property whenever that party has so conducted himself that it would be inequitable to allow him to deny to another party a beneficial interest in the property acquired. This will be so where (i) there was a common intention that both parties should have a beneficial interest either at the date of acquisition or at a later date and (ii) the claimant has acted to his detriment in the belief that by so acting he was acquiring a beneficial interest. Some element of bargain, promise or tacit common intention must be shown in order to establish such a trust. The trust comes into existence at the time of the conduct relied on, not when the court declares its existence, a point very material of in the bankruptcy of one of the beneficiaries. These principles apply equally whether the property is held or registered in the name of one or more parties, and take into account the presumption that the beneficial ownership of property will follow the legal ownership, and that the onus is on the party alleging that the beneficial ownership is different to show why... "

22. The Plaintiff also notes the following questions to be considered as set out in **Lewin on Trusts at paragraph [10-063]**:

"Questions to be considered

(1) Does the case fall within the domestic consumer context, such that the common intention doctrine applies?

(2) Is there evidence of an actual common intention, in the form of an agreement, arrangement or understanding between the parties that the beneficial ownership should not follow the legal ownership, either at the date when the property was first acquired or at some later date? In the absence of such a common intention, can an agreement, arrangement or understanding to this effect be inferred from the parties' conduct?

(3) Has the claimant relied to his detriment on the common intention relied upon?

(4) If there is an actual common intention, does it extend, either expressly or by inference, to the shares in which the property is to be beneficially owned?

(5) If the common intention does not extend to the shares in which the property is to be beneficially owned, what is a fair share having regard to the whole course of the parties' dealing in relation to the property, and to both financial contributions and other factors?"

23. The issue of a common intention constructive trust was authoritatively considered by the House of Lords in *Stack v Dowden* [2007] 2 AC 432, where Lady Hale opined as follows:

"68 ... It cannot be the case that all the hundreds of thousands, if not millions, of transfers into joint names using the old forms are vulnerable to challenge in the courts simply because it is likely that the owners contributed unequally to their purchase.

69 In law, 'context is everything' and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit

of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and at they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.

70 This is not, of course, an exhaustive list..."

24. **Stack v Dowden** was revisited in **Jones v Kernott [2012] 1 AC 776**, where the UK Supreme Court said the following:

"46 ... The primary search must always be for what the parties actually intended, to be deduced objectively from their words and their actions. If that can be discovered, then, as Mr Nicholas Strauss QC pointed out in the High Court, it is not open to a court to impose a solution upon them in contradiction to those intentions, merely because the court considers it fair to do so.

47 In a case such as this, where the parties already share the beneficial interest, and the question is what their interests are and whether their interests have changed, the court will try to deduce what their actual intentions were at the relevant time. It cannot impose a solution upon them which is contrary to what the evidence shows that they actually intended. But if it cannot deduce exactly what shares were intended, it may have no alternative but to ask what their intentions as reasonable and just people would have been had they thought about it at the time. This is a fallback position which some courts may not welcome, but the court has a duty to come to a conclusion on the dispute put before it."

"51 In summary, therefore, the following are the principles applicable in a case such as this, where a family home is bought in the joint names

of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests.

(1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.

(2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change.

(3) Their common intention is to be deduced objectively from their conduct:

‘the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party’s words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party’: Lord Diplock in *Gissing v Gissing* [1971] AC 886, 906.

Examples of the sort of evidence which might be relevant to drawing such inferences are given in *Stack v Dowden* [2007] 2 AC 432, para 69.

(4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, “the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property”: Chadwick LJ in *Oxley v Hiscock* [2005] Fam 211, para 69. In our judgment, “the whole course of dealing ... in relation to the property” should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties’ actual intentions.

(5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).”

25. The Plaintiff also references the concept of a common endeavour constructive trust as recognized in the Australian case of *Muschinski v Dodds* (1985) 62 ALR 429, in which an unmarried couple decided to buy a property on which to build a prefabricated house and restore

a cottage to be used by the woman as an arts and craft centre. The woman paid the purchase price of the land from her own funds and agreed to include the man's name on the legal title on the basis that he undertook to renovate the cottage and pay for the prefabricated house. The land was transferred to them as tenants in common in equal shares. The parties subsequently separated before the cottage was renovated or the house was constructed, at which point in time the woman had contributed \$25,259, and the man \$2,549. The woman sought a declaration the man held his joint legal interest in the land in trust for her. In that case a majority of the High Court of Australia held that the parties held their respective legal interests upon constructive trust to repay each of the parties his or her respective contributions, and as to the residue for them both in equal shares.

26. In considering the question of the intention of the parties, the Plaintiff submits that no material significance should be attached to the fact that legal title to the relevant properties was placed in the parties' joint names, because the significance of a conveyance into joint names was never explained to Marr, who approached the purchase of those properties on the basis of commercial/business principles; and there is no evidence of any discussion between the parties (whether at the time of acquisition or at any point thereafter) as to the beneficial interests in the properties.
27. The Plaintiff further submits that the notion that Marr intended to make an outright gift to Collie of 50% of each of the properties is unsustainable, as this notion cannot be reconciled with the fact that these Properties were always intended by Marr to be long term investments for him; that he discussed the basis upon which each property would be acquired, that he never viewed himself as the breadwinner in the relationship, and that Marr dealt with Collie in an impersonal fashion with respect to other financial matters. He further submits that the question of why Marr kept purchasing properties in both names after Collie failed to live up to his promises is answered by the fact that Marr relied on Collie's promises, and to consider otherwise would be to ignore the wrong done to Marr by Collie in deceiving Marr.
28. The Plaintiff contends that, having regard to the fact that Marr alone provided the finances for the acquisition of the relevant properties, and having regard to the manner in which the parties dealt with those properties after acquisition, including the fact that Marr alone has made the requisite payments and provided for any maintenance and relevant HOA fees, Marr alone is the sole beneficial owner of the properties under a purchase money resulting trust and that alternatively, Marr is the sole beneficial owner of the properties under a common intention constructive trust.
29. It is finally submitted that it would be wholly inequitable and unconscionable for Collie to assert his legal interest in the properties against Marr, and that if Marr is not held to be the sole beneficial owner, it would be just and equitable for the court to follow **Muschinski v Dodds (1985) 62 ALR 429**, and order the sale of the properties, the discharge of any remaining debts over the properties, the repayment of their respective contributions, and the division/distribution of any surplus between Marr and Collie. Such an approach would require

an equitable accounting, to discern the amounts expended by each party, and the division of any surplus.

THE DEFENDANT'S CASE

30. The Defendant does not really join issue with respect to the applicable law in this matter, but contends that the relevant legal principles should be applied in a different manner than that proposed by the Plaintiff. With respect to the question of a resulting trust, the Defendant submits that the principles of resulting trust should not be applied in this instance as there is no valid declaration of trust governing the issue, and this dispute arose between parties who were cohabiting at the material time.
31. The Defendant instead submits that the appropriate course is to consider constructive trust principles, and rely on portions of the decision of *Stack v Dowden* (2007) 2 AC 432 at paragraphs 56 and 58 where Baroness Hale states:-

“56 Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.”

“58 The issue as it has been framed before us is whether a conveyance into joint names indicates only that each party is intended to have some beneficial interest but says nothing about the nature and extent of that beneficial interest, or whether a conveyance into joint names establishes a prima facie case of joint and equal beneficial interests until the contrary is shown. For the reasons already stated, at least in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved.”

32. The Defendant also relies on the analysis of *Stack v Dowden* in *Jones v Kernott* (2012) 1 AC, and note in particular the finding at paragraph 15:

“ At its simplest the principle in *Stack v Dowden* is that a “common intention” trust, for the cohabitants’ home to belong to them jointly in equity as well as on the proprietorship register, is the default option in joint names cases. The trust can be classified as a constructive trust, but it is not at odds with the parties’ legal ownership. Beneficial ownership mirrors legal ownership. What it is at odds with is the presumption of a resulting trust”.

33. The Defendant also cites the Privy Council decision in the instant case of **Marr v Collie (2017) UKPC 17** at paragraph 49 where the court says:

“Where a property is bought in the joint names of a cohabiting couple, even if that is an investment, it does not follow inexorably that the “resulting trust solution” must provide the inevitable answer as to how its beneficial ownership is to be determined.....It is entirely conceivable that partners in a relationship would buy, as an investment, property which is conveyed into their joint names with the intention that the beneficial ownership should be shared equally between them, even though they contributed in different shares to the purchase. Where there is evidence to support such a conclusion, it would be both illogical and wrong to impose the resulting trust solution on the subsequent distribution of the property.”

34. The Defendant therefore submits that where there is a conveyance of properties in joint names, the Court must begin with the presumption that joint legal ownership equates to joint beneficial ownership, with the burden being placed on the party asserting a beneficial ownership different from the legal ownership to rebut that presumption. The Defendant submits that this can only be done by a fact sensitive analysis of the evidence, and suggest that while the Plaintiff has asserted that the relevant properties were purchased as joint investments, no evidence has been provided of any particulars of these joint investments.
35. In conducting that factual analysis, the Defendant submits that with respect to the boat and vehicle, the Plaintiff has said that these were registered in the Defendant’s name because he (the Plaintiff) wanted the Defendant to be able to use those vehicles as he wished for as long as they were together. The Defendant notes that it is not necessary to have a car or boat registered in a person’s name for that person to be able to use that conveyance freely, and therefore suggest that this is not a credible explanation.
36. The Defendant also notes that in cross-examination the Plaintiff acknowledged that no discussions ever occurred between the parties with respect to beneficial ownership of the joint properties; that at the inception of the relationship the Plaintiff was earning around \$50,000.00 annually while the Defendant had no income, that the Plaintiff did not know the details of the operations of the Defendant’s business, and therefore could have no idea of the Defendant’s earning potential, that there were no written agreements between the parties, that the Defendant was named in the Plaintiff’s will as beneficiary, and was also the beneficiary of an annuity purchased by the Plaintiff. It is therefore suggested that the Plaintiff could not have credibly thought that the Defendant would make matching contributions.
37. In referring to the evidence of the Defendant, the defence notes that at the time of the acquisition of the Dean’s Lane property, the parties had each executed a Last Will and Testament naming the other as beneficiary, and that there were no discussions regarding the

beneficial ownership of that property being in proportion to the amount of money each person contributed towards the purchase price.

38. With respect to the Rainbow Bay Lots the Defendant's evidence is that he incurred some expenses traveling to and from Eleuthera to inspect the properties and have them cleared down, and also in procuring designs, but that he gave no formal undertaking to the Plaintiff that he would construct the cottage at his sole expense.
39. The Defendant also emphasizes the construction work carried out by him at the Town Court Unit, and states that he gutted and cleaned the Unit, repaired plumbing issues, repaired windows and doors, and removed all existing cabinet and furniture, and reiterates that there were no discussions regarding beneficial ownership being proportionate to contribution. He also says that, with respect to the course of dealings after the decision of the Supreme Court, he could have no dealings with the properties because he had no access to the properties.
40. The Defendant also avers that the Boat and Truck were gifts, paid for from the substantial bonuses earned by the Plaintiff, and that, at least in the case of the truck, the Plaintiff offered to pay for the Truck himself stating that it was the least he could do for the Defendant.
41. The Defence concludes by placing heavy reliance on the fact that the legal title of the real properties was placed in both of the parties' joint names, despite the fact that Plaintiff expended the funds to acquire those properties. They say that despite the fact that the Plaintiff now asserts that he never intended to be a "bread winner" or a "sugar daddy", his actions at the material time showed otherwise, as he knew from the inception of the relationship that the Defendant had no income when they first met, and no fixed income afterward. They say that any contention that the Defendant was expected to make equal contributions was mere rhetoric, and is unsustainable.
42. Instead, the Defendant submits that the Plaintiff loved and cared for the Defendant, and their view at the time was that their relationship would last forever. They were therefore securing their future with no consideration or thought given to what would happen if the relationship was terminated, and the implication is that the present position of the Plaintiff is revisionist and unsustainable.
43. The Defence further submits that **Muschinski v Dodds** should not be applied as the property in that action was conveyed to the parties as tenants-in-common, whereas in this instance the real properties were all conveyed to Marr and Collie as joint tenants, and because the parties in **Muschinski** had actual discussions and an agreement prior to acquisition as to the dollar value of their respective contributions. The Defendant further says that in any event **Muschinski** is not binding on this court and is only persuasive.
44. The Defence therefore requests declarations that the Defendant has a 50% beneficial interest in all of the real properties, and that the Defendant had a 50% beneficial interest in the Truck

and Boat and is thus entitled to 50% of the net proceeds received by the Plaintiff from the sale of those chattels.

DISCUSSION

45. The ambit of this enquiry was delineated by the Privy Council in **Marr v Collie** as follows:

60. Both parties to the appeal invited the Board not to remit the case for the determination by a lower court of the issues which arise. The Board is conscious of the undesirability of prolonging what have already been protracted proceedings. It has concluded, however, that there is no feasible alternative to this course. No proper examination of the actual intentions of the parties has taken place. For the reasons given earlier, the Board considers that such an examination is unavoidable if a proper determination is to be made of the respective beneficial interests of the parties in respect of the investment properties, the truck and the boat. Moreover, it is of the view that, in line with the decision in Muschinski, it is necessary that it be decided whether account be taken of the contributions made by the parties to the purchase of the various properties and assets whose beneficial interest is in dispute. (This does not include the South Westridge property.)

61. The Board will therefore humbly advise Her Majesty that the appeal should be allowed and that the case should be remitted for hearing before the Supreme Court of the Bahamas in order that the issues outlined in this opinion, particularly the intention of the parties at the time of the purchase of what have been described as the investment properties and in the course of dealing with those properties, be determined.

Having reviewed the evidence in its entirety, I must say that I prefer the evidence of the Plaintiff, who was meticulous in documenting his expenditures, and who does not appear to attempt to overstate his position, whereas Collie's evidence seems designed to cast himself as the victim of a person whom he regarded as the love of his life, but who callously cast him aside when a new love came along. Collie also seems to emphasize his contributions to the domestic aspects of the relationship, but I note that this was not a marriage, in which the contributions of a housewife would be considered in determining the appropriation division of marital assets.

I also note that, in the Supplemental Witness Statement, Collie at one point says that when the mortgage on the Dean's Lane property was moved to RBC, they remained severally liable for that mortgage. This is contrary to his earlier statement that the RBC loan was done solely by Marr on a US dollar account, as Collie had no lawful authority to deal in US dollars. Collie also says at one point that they both made deposits to a US dollar account, but has provided no

actual evidence of any deposits made by him. Indeed, the manner in which Collie refers to the activity on that account and the purchases that they made seems to reflect his view that the couple operated on the principle that what is yours is mine and what is mine is yours. This is in my view a very attractive concept from Collie's point of view, when he has provided no evidence that he made any substantial contribution other than love and affection, which seems on the evidence to have been provided by both parties in what was a loving relationship prior to dissolution.

46. Much has also been made of the facts that the parties executed wills in which each was named as the beneficiary of the other's estate, and that Collie was the beneficiary of an annuity purchased by Collie. However, I note that these indicate only a wish that at the maturity of the annuity or on the demise of Marr, Collie would benefit. These can be easily changed, and do not confer any lasting and immediate benefit. These facts therefore do not change my view of the intentions of the parties with respect to the acquisition of the relevant properties and chattels.
47. For the purposes of this inquiry, I find as facts that Marr paid for the entirety of the subject assets, save for the sum of \$2,968.94 by Collie towards the Hampton Ridge Unit, as found by Isaacs J and not disputed. I also find, based on the evidence of Marr, which I prefer, that the parties acquired the real estate as investments to secure their future, and that at the time of the acquisition of those assets, it was the intention of the parties that each would contribute in cash or kind to the acquisition and development of those assets as true partners. I also accept that the significance of joint ownership was never inquired into or explained at the time the properties were acquired.
48. While Marr was undoubtedly the major earner throughout the relationship, I do not accept that Marr considered himself the breadwinner in this relationship. In fact, Collie was also a highly educated man who worked as an electrical and building contractor, with the potential for substantial earnings. It was therefore quite reasonable to expect that, while at the start of their cohabiting Collie was just starting his businesses, his earnings, and thus his financial contributions, would increase significantly once his businesses moved from that nascent stage. This never materialized, and it is thus clear to me that Collie did not live up to his end of the partnership.
49. In considering the intention of the parties I have also considered their dealings with the various properties after acquisition. The evidence which I accept is that while Collie carried out some works on the Dean's Lane property and the Town Court condo, Marr paid for those works, and has continued to be responsible for all of the outgoings. This does not support the contention of an equal ownership of those properties. I have also considered the fact that at one point both were responsible for the mortgage on the Dean's Lane property, and that they were both liable to pay the Hampton Court mortgage. However, in my view, the legal obligation to repay does not outweigh the fact that only one in fact made payments. That person was Marr.

50. The question has also been raised as to why Marr continued to purchase assets in both names in 2008 when it should have been clear that Collie was not providing any financial input. Marr says he did this because he continued to rely on Collie's assurances. Having found that Marr is the more credible witness, and bearing in mind that this was still prior to the breakdown of the relationship, when it was still anticipated that they would remain life partners, and bearing in mind the civil standard of proof applicable in these proceedings, that is whether it is more likely than not, I do not consider it to be farfetched that Marr would continue to rely on assurances from someone whom he clearly loved. His actions might be unwise, but actions taken in the fog of emotional entanglements are often unwise. However, they are no less understandable. I therefore accept that Marr was still relying on the expectation that Collie would make like contributions.
51. With respect to the boat and truck, my view is different. The car was purchased in both names, while the truck was registered in the name of Collie alone, although Marr says that at the time he did not know this to be the case. I note Marr's evidence that he wanted Collie to feel free to use those items as he wished, and I note also the submission of counsel for the Defendant that it was not necessary to have the items in Collie's name for him to be free to use them. The evidence is also that Marr purchased a vehicle for himself in his name alone. In my view, the fact that these items were intended to be in joint names, although they seem to have been primarily for Collie's use, supports the inference that these items were jointly owned both legally and beneficially. Furthermore, these were not investments intended to secure the future of the parties, but were depreciable assets, nor is there any evidence that Collie was expected to make an equal contribution at some later stage. I therefore find on the balance of probabilities that these were jointly beneficially owned, and each is entitled to fifty percent of the value of those items.
52. The difficulty in this case seems to have arisen in seeking to determine whether the resulting trust principles or the constructive trust principles should be applied, and if so, in what manner. The issue is encapsulated at paragraph 53 *et seq* of the Privy Council decision in **Marr v Collie** as follows:

53. If what Lady Hale described as a "starting point" (that joint legal ownership should signify joint beneficial ownership) is to be regarded as a presumption, is it in conflict with the presumption of a resulting trust where the parties have contributed unequally to the purchase of property in their joint names? A simplistic answer to that question might be that, if the property is purchased in joint names by parties in a domestic relationship the presumption of joint beneficial ownership applies but if bought in a wholly non-domestic situation it does not. In the latter case, it might be said that the resulting trust presumption obtains.

54. The Board considers that, save perhaps where there is no evidence from which the parties' intentions can be identified, the answer is not

to be provided by the triumph of one presumption over another. In this, as in so many areas of law, context counts for, if not everything, a lot. Context here is set by the parties' common intention - or by the lack of it. If it is the unambiguous mutual wish of the parties, contributing in unequal shares to the purchase of property, that the joint beneficial ownership should reflect their joint legal ownership, then effect should be given to that wish. If, on the other hand, that is not their wish, or if they have not formed any intention as to beneficial ownership but had, for instance, accepted advice that the property be acquired in joint names, without considering or being aware of the possible consequences of that, the resulting trust solution may provide the answer.

53. Of course, the initial intention (or lack of it) at the time of purchase may change. This was the reason that the majority in *Stack v Dowden* emphasised that examination of the course of conduct of the parties over the years in which they dealt with the property is relevant. And it is why an intense examination is warranted of why the properties acquired in this case in 2008 were purchased in joint names. By that time, many of the contributions which, according to Mr. Marr, he expected Mr Collie to have made, had not materialised. Why did he continue to agree that the properties should be acquired in joint names?
54. The resulting trust position obtains where a presumption is applied that a party who gratuitously receives a legal interest in a property holds the beneficial interest in that property on trust for the party who made the gratuitous transfer. On the other hand, a constructive trust arises where, as was said in *Lewin on Trusts*, one party so conducts himself that it would be inequitable to allow him to deny to another party a beneficial interest in the property so acquired. In either case, the intentions of the parties must be determined, as, even where the basis for a resulting trust exists, the presumption may still not be drawn, if it is concluded that a gift was in fact intended, while an ascertainment of the intentions of the parties is crucial to determine whether a constructive trust exists.
55. Given my findings with respect to the intentions of the parties, it is my view that a resulting trust was created when the properties were acquired, and that Collie held his fifty percent legal interest on trust for Marr, who contributed the entirety of the purchase monies. I accept that the burden is on Marr to displace the legal principle that equity follows the law, which would result in the beneficial interests in the properties corresponding to the legal interests, but in my opinion, Marr has discharged that burden to the requisite standard.
56. I must go on to say that, given my findings with respect to the evidence that there was no legal advice sought or provided with respect to the significance of joint ownership at the time the relevant properties were acquired, and the context in which those acquisitions are placed having

regard to the course of dealings with those properties, I would still be prepared to hold Marr to be entitled to the entire beneficial interest even if it was found that the parties had not formed a common intention. This is because, as was said in **Stack v Dowden**, “in those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they own the property, the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property.”

57. The whole course of dealing in this case includes the fact that Marr provided all finances, that Collie was compensated for work that he performed at the various properties, and that Marr continued to be responsible for all finances after the breakdown of the relationship approximately fifteen years ago. In my view, it would be unconscionable to hold that Collie was entitled to a fifty percent beneficial interest in circumstances where Marr continued to extend himself to what would be his sole detriment. I have also considered the email referenced at paragraph 16 of the decision of the Court of Appeal, to which strenuous objection was taken. It is not clear from the excerpt whether the consideration of a joint purchase refers to a purchase by these parties or Marr and some other person, but even if it refers to Collie, in my view nothing is changed, as the evidence that I have accepted leads to the conclusion that gifts were not intended, and it would still be inequitable and unconscionable to find otherwise.

CONCLUSION

58. In all the circumstances of this case, I find that the Plaintiff is the full beneficial owner of the properties at Dean’s Lane, Town Court, Hampton Court, and the two properties at Rainbow Bay. I further find that the parties are each entitled to fifty percent of the value of the truck and boat, which were sold some time ago by Marr for \$10,000.00 and \$24,000.00 respectively. Collie is also entitled to the sum of \$2,968.94 which was found to have been expended by him with respect to the Hampton Court unit. Costs of this action are awarded to the Plaintiff, to be assessed by this court if not agreed. The parties are at liberty to apply.



Dated this 16th day of February, A.D. 2024

Neil Brathwaite
Justice

