IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
CLAIM NO 2005 HCV 01779

BETWEEN	CALVIN LENDEN ABRAHAMS	CLAIMANT
AND	VIRGINIA WILLIAMS	DEFENDANT

IN CHAMBERS

Seymour G. Stewart for the claimant
Barrington Frankson for the defendant

September 18 and October 2, 2008

BENEFICIAL INTEREST IN PROPERTY - DETERMINATION OF INTEREST

SYKES J.

1. By way of a fixed date claim form Mr. Calvin Abrahams is claiming a beneficial interest in property registered at volume 1184 folio 589 of the Register Book of Titles. When the claim form was filed he sought:

a. a declaration that he is the sole legal and beneficial owner of the disputed property;
b. a declaration that the defendant had no legal or beneficial interest in the disputed property;
c. a declaration that the defendant held the land on trust for him;
d. an order that the legal interest be transferred to him.

2. The claim has been amended and he is claiming only a half share.

The property

3. The dispute arose in the following circumstances. Mr. Amos Williams, the father of Miss Virginia Williams, worked in the sugar industry for a number of years. He worked at the Bernard Lodge Sugar Estate located in the parish of St. Catherine. Some time around 1977, a number of institutions

came together and developed a scheme to provide low cost housing for sugar workers. The institutions were the Sugar Industry Authority (SIA), the Sugar Industry Housing Limited (SIHL) and the National Housing Trust (NHT). Out of this arrangement came an agreement for sale between the SIHL on the one part, as vendor, and Mr. Amos Williams, Miss Virginia Williams and Mr. Theophilus Wilson, on the other part, as purchasers under which the purchasers were buying property located at lot 76, part of Reid's Pen and Congreve Park, registered at volume 1184 folio 589 of the Register Book of Titles. All three purchasers signed the agreement as did the vendor. The agreement for sale is undated.

4. It is not clear what tenancy was in the view when the sale agreement was signed but suffice it to say when Miss Williams and Mr. Wilson were registered as the registered proprietors on January 7, 2005, they were registered as joint tenants. Mr. Amos Williams was still alive at this time and it is noteworthy that his name does not appear as a registered proprietor. Miss Williams explains by way of affidavit evidence that her father was living at another property and the property being purchased was intended by him to be for her and her son, Mr. Theophilus Wilson, that is to say, the father was making a gift to her and her son since there is no evidence that despite their names being on the sale agreement and the mortgage instrument that they were expected to undertake the payment of the mortgage at the time the property was acquired. Mr. Wilson died in December 2004. Thus Miss Williams is now entitled to the full beneficial and legal interest subject of course to the outcome of Mr. Abrahams' challenge to her current status.

5. As is common with land purchases today, the property was purchased with the assistance of a mortgage. SIHL were the mortgagees. It was a vendor's mortgage. According to the mortgage instrument, the date of the advance was December 21, 1977 and the date for repayment was December 20, 2002. The sum lent was $14,450 at an initial interest rate of 10%. There is no clear evidence indicating what the monthly repayment was.

6. It should be observed that Mr. Abrahams was not a party to the mortgage or the sale agreement. There is no evidence that the vendor knew of Mr. Abrahams. Mr. Williams, Miss Williams and Mr. Wilson were the only persons liable on the mortgage. What is clear is that, on the face of it,

there was no intention to give Mr. Abrahams any beneficial interest in the property at the time of acquisition.

7. Mr. Abrahams presents a different picture. According to Mr. Abrahams, he was told by Miss Williams that her father was offered the property but he could not pay for it and neither could she. There is no evidence concerning the financial health of Mr. Wilson and neither is there evidence of Mr. Abrahams having any discussion with him regarding the property. Mr. Abrahams' thesis is that in light of the impecuniosity of Mr. Williams and Miss Williams he under took to pay the mortgage in exchange for a proprietary interest. Mr. Abrahams' case is that he not only offered to repay the mortgage but he in fact repaid the entire mortgage. I now turn to the applicable law before examining the affidavit evidence and the evidence elicited in cross examination.

The applicable legal principles

8. It is well established in Jamaica that whenever the court is called upon to determine the beneficial interest of parties in real property, the applicable law is the law of trust (see for example ***Harris v Harris*** (1982) 19 J.L.R. 319; ***Lynch v Lynch*** (1989) 26 J.L.R. 113; ***Edmonson v Edmonson*** (1992) 29 J.L.R. 234; ***Forrest v Forrest*** (1995) 48 W.I.R. 221).

9. It is equally well established that the same principles apply to spouses, strangers, friends and business partners, though the inferences that one draws from the factual circumstances may differ since the court must have regard to the nature of the relationship between the parties and the context of the acquisition of the particular property over which the dispute has arisen in order to determine which inference is more likely in all the circumstances of the case before the court. In other words, the same basic facts in, for example, a marriage, may lead to a different inference from that drawn from a business relationship although the applicable legal principles are the same (see ***Pettitt v Pettitt*** [1970] A.C. 777 which has been accepted as stating the law applicable to Jamaica).

10. It is also well established that the extent of the beneficial interest held is determined at the time of the acquisition even though the court is usually called upon to make this determination years after the property was acquired (see Lord UpJohn in ***Pettitt v Pettitt***). The fact that the

determination is being made after the property is acquired in and of itself does not confer any power on the court to alter the beneficial interest of the parties unless the alteration comes about by well settled principles of law, that is, (a) an agreement that complies with all the requisite statutory formalities where that is required, as for example, section 4 of the Statute of Frauds, (b) a proprietary estoppel, or (c) by way of constructive trust. This well established principle has now been put in doubt by the higher courts in England and Wales, if not across the board, but certainly, at least, in relation to unmarried couples where the disputed property is the home in which they lived.

11. The new found power of the courts to alter the beneficial interest of unmarried couples is found in cases decided by the Court of Appeal of England and Wales and the House of Lords, and in the case of married couples, the Judicial Committee of the Privy Council. In the case of ***Abbott v Abbott*** (2007) 70 W.I.R. 183, the Judicial Committee took the view that the England and Wales' Court of Appeal's decision in ***Oxley v Hiscock*** [2005] Fam 211 and the House of Lords case of ***Stack v Dowden*** [2007] 2 W.L.R. 831 expressed the law that is now applicable. It would seem, if I follow the logic of these three decisions, that this new found power applies, to unmarried (***Oxley*** and ***Stack***) and married couples (see ***Abbott***).

12. One of the critical points in ***Oxley*** and ***Stack*** is that the time of acquisition no longer has a pivotal role to play in the determination of the beneficial interest. A necessary corollary of this is that the resulting trust analysis is now no longer applicable or at least not in the same way. What has happened is that the constructive trust is now seen as the best means of resolving property disputes between married or cohabiting couples. But this constructive trust does not seem to be a legitimate descendant or close relative of the constructive trust usually found in this area of law. The constructive trust usually inhabits this area of law can be described as arising in circumstances where the holder of the legal estate led the claimant to believe that he or she would have a proprietary interest in the property and the promise acted to his or her detriment based the promise made by the legal estate holder. Equity construes those facts (hence the name constructive trust) as giving rise to a proprietary interest in the property. Because of the danger of enforcing a trust for land without there being compliance with the statutory formalities, equity always required some

onerous act on the part of the claimant. In English jurisprudence this type of trust is called the common intention constructive trust.

13. It is true that often times the courts strain to find the elusive common intention used to ground these trusts. The judicial technique developed to deal with this problem of establishing the common intention, as just mentioned, is to look for evidence of onerous conduct on behalf of the claimant. Once there is evidence of onerous conduct, the next question is to find out the best explanation for the claimant's undertaking of such onerous conduct (see discussion by Nourse L.J. in ***Grant v Edward*** [1986] 3 W.L.R. 120, 121 - 122). Is the explanation a promise as the claimant alleges? This technique had to be developed because the parties were usually at odds on whether there was such a common intention. If the court was going to find that there was a common intention then the onerous conduct was able to do double duty as (a) evidence that there must have been such an intention and also as (b) evidence of acting on the promise. In some rare cases, there may be clear evidence that there was such a common intention that stands independent of the onerous conduct. In this circumstance the problem then becomes what evidence is sufficient to amount to acting on the promise.

14. Even in the rare case where there is free standing evidence of the common intention to benefit the claimant, it is exceedingly rare for the parties to specify what act would be regarded as sufficient evidence of acting on the agreement. In this exceptionally rare class of case, the problem is whether what was done by the claimant (for the claimant must do something because unless act is done all that would be there would be an oral declaration of a trust in land which would be unenforceable) is sufficient to ground the constructive trust. Again, the judicial solution was onerous conduct. If there was anything less then there was the risk of resurrecting the ghosts that the Statute of Frauds had already slain, that is enforcing a trust of land where the statutory requirements were not met.

15. The new model constructive trust of the House and the Board does not seem to require any onerous conduct. The next two citations, when read together, make the point. The judgment of Chadwick L.J. in ***Oxley*** at paragraph 66 makes this point:

> *Once it is recognised that what the court is doing, in cases of this nature, is to supply or impute a common intention as to the parties' respective shares (in circumstances in which there was, in fact, no common intention) on the basis of that which, in the light of all the material circumstances (including the acts and conduct of the parties after the acquisition), is shown to be fair, it seems to me very difficult to avoid the conclusion that an analysis in terms of proprietary estoppel will, necessarily, lead to the same result; and that it may be more satisfactory to accept that there is no difference, in cases of this nature, between constructive trust and proprietary estoppel.*

16. In other words, for the Lord Justice, the courts of England and Wales were engaged in a fiction of imputing non-existent intentions to parties in order to arrive at a satisfactory outcome. This passage runs counter to the point I have been making so far. However, the fact is that many of the cases are in fact based on an assertion by the claimant that a promise was in fact made to them and so the search for the common intention is not a search for what does not exist. The problem is the nature of the evidence proffered by the claiming party and that evidence, at times, is not of the highest quality, but sympathetic judges had a tendency to find (some would say the judicial equivalent of reading tea leaves) that the intention exists where the evidence was really wanting. Thus I do not agree with Lord Justice Chadwick that the courts are engaged in a fictional enterprise. Another point that I humbly suggest that the Lord Justice over looked is that where the parties have in fact contributed to the acquisition of the property the orthodox analysis is that the respective shares of the proprietary interest are allocated according to resulting trust principles. The default presumption (easily rebuttable I might add) is that persons who contribute to the acquisition of property purchase on their own behalf and are not presumed to be making a gift unless the facts suggest that this is the case. Again, it is not that the courts attribute to the parties a none existent intention but they decide that most persons do not make gifts of property that they purchase and this default position is attributed to the litigants not on the basis of a fiction but on the basis that those person as normal reasonable persons act in the way that normal reasonable persons act.

17. Chadwick L.J. followed up his analysis and concluded at para. 69 that:

> *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.*

18. This position has now been approved by the House of Lords in ***Stack***. However the House, through Baroness Hale who delivered what is considered the leading judgment of the majority fixed this development on two premises. The first was "that the evolution of the law of property to take account of changing social and economic circumstances will have to come from the courts rather than Parliament" (see para. 46). This conclusion was arrived at after her Ladyship noted the rather depressing conclusion of the law reform commission which stated that, "It is quite simply not possible to devise a statutory scheme for the ascertainment and quantification of beneficial interests in the shared home which can operate fairly and evenly across the diversity of domestic circumstances which are now to be encountered." (para 1.31.) (see para. 46 of ***Stack***). I should point out that the English legislature had given judges the power to alter the property rights of married couples but had not done so in the case of unmarried couples (see section 37 of the Matrimonial Property and Proceedings Act, 1970). In other words, the premise for the exercise of this judicial power identified by her Ladyship was this: the law had been altered by the legislature to give the courts power to adjust property rights of married couples but had not done so for unmarried couples. The law reform committee said it could not come up with a suitable statutory scheme which can take account of the great diversity of domestic circumstances. Therefore, it was now for the judiciary to take the lead.

19. Thus the inability of the law reform commission in England to find what it considered to be a satisfactory solution led to a sea change in the law in England. The decision of ***Stack v Dowden*** has now been applied in the case of ***Abbott v Abbott***, an appeal to the Board from Antigua and Barbuda, even though, from the report of the case, there was no evidence that the law reformers in Antigua and Barbuda indicated that there was a problem with the law in that country and neither was there any indication that the law reformers in Antigua and Barbuda had exhausted their ingenuity, assuming of course that they were in search of a statutory or some other kind of solution to the problem. There was no indication that the law reformers in Antigua and Barbuda were unhappy with the solutions that they had, which in their case, involved a married couple. It would seem, therefore, that Baroness Hales' sine qua non for judicial innovation in Antigua Barbuda was not established. It is indeed a remarkable thing that the inability of the law commission in England and Wales to develop what they thought was an acceptable solution for their social circumstance should lead to the application of the same remedy to a country where there was no evidence produced before the Board that any constituency in Antigua and Barbuda were just as dissatisfied with the law as it stood.

20. I cannot help but agree with Deane J. of the High Court of Australia in ***Muschinski v Dodds*** 160 C.L.R. 583 where his Honour observed at pages 615 - 616:

> ***The fact that the constructive trust remains predominantly remedial does not, however, mean that it represents a medium for the indulgence of idiosyncratic notions of fairness and justice. As an equitable remedy, it is available only when warranted by established equitable principles or by the legitimate processes of legal reasoning, by analogy, induction and deduction, from the starting point of a proper understanding of the conceptual foundation of such principles:*** *... Viewed as a remedy, the function of the constructive trust is not to render superfluous, but to reflect and enforce, the principles of the law of equity.*

Thus it is that there is no place in the law of this country for the notion of "a constructive trust of a new model" which, "[b]y whatever name it is described, ... is ... imposed by law whenever justice and good conscience" (in the sense of "fairness" or what "was fair") "require it": per Lord Denning M.R., Eves v. Eves(85); and Hussey v. Palmer(86). Under the law of this country - as, I venture to think, under the present law of England (cf. Burns v. Burns(87)) - proprietary rights fall to be governed by principles of law and not by some mix of judicial discretion (cf. Wirth v. Wirth(88)), subjective views about which party "ought to win" (cf. Maudsley, Constructive Trusts, Northern Ireland Legal Quarterly, vol. 28 (1977), p. 123, esp. at pp. 123, 137, 139-140) and "the formless void of individual moral opinion": cf. Carly v. Farrelly(89); Avondale Printers & Stationers Ltd. v. Haggie(90). Long before John Selden's anachronism identifying the Chancellor's foot as the measure of Chancery relief, undefined notions of "justice" and what was "fair" had given way in the law of equity to the rule of ordered principle which is of the essence of any coherent system of rational law. The mere fact that it would be unjust or unfair in a situation of discord for the owner of a legal estate to assert his ownership against another provides, of itself, no mandate for a judicial declaration that the ownership in whole or in part lies, in equity, in that other: cf. Hepworth v. Hepworth (91). Such equitable relief by way of constructive trust will only properly be available if applicable principles of the law of equity require that the person in whom the ownership of property is vested should hold it to the use or for the benefit of another. That is not to say that general notions of fairness and justice have become irrelevant to the content and application of equity. They remain relevant to the traditional

> *equitable notion of unconscionable conduct which persists as an operative component of some fundamental rules or principles of modern equity: cf., e.g., Legione v. Hateley; Commercial Bank of Australia Ltd. v. Amadio.* (my emphasis)

21. It is my view that Deane J. was saying that unconscionable behaviour requiring the intervention of equity has to be grounded in some equitable principle such as estoppel, or constructive trust. The judge could not simply impose his personal ideas of fairness without any constraint. To use this very case, I could not say that because it may have been harsh to eject Mr. Abrahams particularly since he paid $24,000 towards the mortgage it is therefore fair and just to give him a proprietary interest. He has to succeed on some established legal principle and not by reference to some vague and imprecise standard such as "*entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property.*"

22. Indeed when Deane J's judgment is read it is clear he approved of the constructive trust being flexible but not to the extent where it cannot be anchored in principle. So it would appear that the new principle from England involves a survey of the entire history of the parties and then the judge decides what is fair and just without any reference to principle. The Chancellor's foot has returned. It now means that there is no need for any onerous act that goes beyond ordinary domestic activities. It appears that there is no longer even the pretence, as Chadwick L.J. implied, of finding a common intention to benefit the claiming party. A claiming party can simply arrive on the door steps of the court and say "Look at how we have behaved in relation to this property. I therefore have a beneficial interest."

23. I would hesitate to adopt the approach indicated by the House and the Board because the Jamaican Parliament has recently enacted the Property (Rights of Spouse) Act which gives the court power to reorder rights only in regard to the family home. The statute makes provision for unmarried couples, that is to say, a single man and single woman and it has also demarcated the time for which they must live together to come within the statute has indicated that the Jamaican Parliament has made a policy decision regarding judicial power in respect of the family home. The statute

also provides for married couples. It is clear therefore that Parliament was not conferring on the court any power to reordering property rights in any property apart from the family home and so careful was the legislature concerned to proscribe the new power, it defined what was meant by the expression family home. Thus the problem that has arisen in the United Kingdom has been addressed albeit that the Jamaican legislation appears not to apply to same sex couples.

24. The legislation came into force in 2006 and so the premise on which Baroness Hale rested her law reforming efforts does not yet exist in Jamaica. There is nothing in Jamaica to suggest that the law reformers or indeed there is any constituency in Jamaica that thinks that the recent statute and the existing principles of equity where these principles now operate are not working and so there is no demonstrated need for judicial innovation.

25. Continuing with what I understand the law to be, the next principle of significance is that post acquisition conduct is generally irrelevant to the determination of who holds the beneficial interest unless there is evidence that this conduct effected a change in the beneficial ownership or the proportion of the beneficial interest held by the parties. The principle is stated by Lord UpJohn indicated in ***Pettitt v Pettitt*** at page 818:

> *My Lords, the facts of this case depend not upon the acquisition of property but upon the expenditure of money and labour by the husband in the way of improvement upon the property of the wife which admittedly is her own beneficial property.* ***Upon this it is quite clearly established that by the law of England the expenditure of money by A upon the property of B stands in quite a different category from the acquisition of property by A and B.***
>
> ***It has been well settled in your Lordships' House (Ramsden v. Dyson (1865) L.R. 1 H.L. 129) that if A expends money on the property of B, prima facie he has no claim on such property, and this, as Sir William Grant M.R., held as long ago as 1810 in***

> ***Campion v. Cotton (1810) 17 Ves. 263, is equally applicable as between husband and wife. If by reason of estoppel or because the expenditure was incurred by the encouragement of the owner that such expenditure would be rewarded, the person expending the money may have some claim for monetary reimbursement in a purely monetary sense from the owner or even, if explicitly promised to him by the owner, an interest in the land (see Plimmer v. Wellington Corpn. (1884) 9 App.Cas. 699).*** *But the respondent's claim here is to a share of the property and his money claim in his plaint is only a qualification of that. Plainly, in the absence of agreement with his wife (and none is suggested) he could have no monetary claim against her and no estoppel or mistake is suggested so, in my opinion, he can have no charge upon or interest in the wife's property.* (my emphasis)

26. In this passage his Lordship makes the point that expenditure for the acquisition of property is different from expenditure on the property after acquisition. The latter type of expenditure does not confer or create any beneficial interest unless this was agreed between the parties or the holder of the legal estate encouraged or created this belief in the claimant and the claimant acted on the strength of the agreement or encouragement thereby giving rise to an estoppel or a constructive trust. If this happens then a court of equity will not permit the holder of the legal estate from resiling on his promise. The basis of the courts intervention is fraud - equitable fraud. Actual dishonesty is not a prerequisite for the court to act but if present, it only strengthens the hand of the claimant.

27. In respect of equitable estoppel Lord Walker in ***Yeoman's Row Management v Cobbe*** [2008] 1 W.L.R. 1752 said at page 46:

> *Equitable estoppel is a flexible doctrine which the Court can use, in appropriate circumstances, to prevent injustice caused by the vagaries and inconstancy of human nature.* ***But it is not a sort of joker or wild***

> ***card to be used whenever the Court disapproves of the conduct of a litigant who seems to have the law on his side.*** *Flexible though it is, the doctrine must be formulated and applied in a disciplined and principled way. Certainty is important in property transactions.*

28. His Lordship, like Deane J. in ***Muschinski*** was anxious to restrain judges who may be tempted by the harshness of the outcome of the application of the law to find a proprietary interest where none in fact exists. This, I suggest, has been the real vice in the English case law since ***Pettitt v Pettitt***.

29. The instant case involves property that was acquired by way of a mortgage. I now address the legal principles applicable in these circumstances. According to the English cases, where a property is purchased by means of a mortgage, for some reason that is not clear, the working assumption seems to be that repayment of the mortgage is to be regarded as instalment payments towards the purchase price rather than payments to remove the encumbrance on the property. This comes out quite clearly in Lord Diplock's judgment in ***Gissing v Gissing*** [1971] A.C. 886.

30. It would seem to me that the Australian High Court has a better analytical model which is that the mortgage repayments are paid to secure the release of the property from the charge on it since the vendor is paid from the proceeds of the mortgage and has fallen out of the picture leaving, the mortgagor in a debtor/creditor relationship with the mortgagee (see for example ***Calverley v Green*** (1984) 155 CLR 242, 252-3). This approach was further refined by the High Court which decided that in any given case the task should be to see if the intention of the parties was to acquire property that was free from mortgage or a property subject to mortgage with the consequence being that if it is the former then the beneficial interest would be held in direct proportion to the purchase price and the money to clear any mortgage whereas if it is the latter then the money to pay off the mortgage does not affect the beneficial interests of the respective parties which is determined at the time of acquisition (see ***Bloch v Bloch*** (1981) 180 CLR 390). In this latter scenario the payment of mortgage by one party where two or more are liable on the mortgage is seen as giving rise to a personal claim only against

the non-paying party and cannot create a proprietary interest unless an estoppel, a Ramsden v Dyson situation or a constructive trust arises. It should be obvious that in the case of acquiring a mortgage free property it is the resulting trust analysis that operates so that the beneficial interest is held according to the actual contribution.

31. In the case before me the property was being acquired subject to mortgage. The evidence does not show that the purchasers intended to acquire a mortgage-free property. Their beneficial interest, therefore, would not be determined by who paid the mortgage. The interest would be determined when the property was acquired. Therefore a person who is not liable on the mortgage, for example, Mr. Abrahams, could not acquire an equitable interest in the property just by the mere act of repaying the mortgage.

32. In all cases where the court is called upon to determine the beneficial interest of parties, according to Lord Morris in ***Pettitt*** at page 804:

> *The court must find out exactly what was done or what said and must then reach conclusion as to what was the legal result. The court does not devise or invent a legal result.*

33. And in telling the parties the legal result of what they did or said the court must, according to Lord Morris, "*weigh every piece of evidence as best he may, the fact that the parties are husband and wife with all that is as a result involved, is in itself a weighty piece of evidence. Sometimes the conclusion will be that ownership was in one party alone; sometimes the conclusion will be that ownership was in both parties. There will be some cases in which a court is satisfied that both the parties have a beneficial interest, and a substantial beneficial interest but in which it is not possible to be entirely precise in calculating their respective shares*" (see pages 803 - 804 in ***Pettitt***).

34. In this passage his Lordship was reminding that the actual relationship between the parties will have an impact on the kind of inferences drawn from the specific facts.

The evidence

35. Mr. Abrahams and Miss Williams were cross examined on their affidavits. Mr. Abrahams' bold assertion was that he paid the entire mortgage. At paragraph 11 of his affidavit, he states specifically, that Miss Williams "did not pay any money towards the acquisition of [the property] and she has never paid any money towards the mortgage repayment, none whatsoever." He followed this up in paragraph 14 by stating that "in all the years as I have outlined above I am not aware of the defendant or Amos Williams making any of the mortgage repayments for [the property]. Amos Williams retired from Bernard Lodge as a pensioner in about 1990 and died on March 15, 2005."

36. To further his claim that he alone repaid the mortgage Mr. Abrahams put into evidence a number of receipts. These receipts bore his name and according to his version of events, these receipts were the ones given to him when he paid the mortgage directly to the mortgagee and the receipts were written in his name. The direct payment to the mortgagee came about some time in 1986 when it was no longer deducted from Mr. Williams' salary. Here is Mr. Abrahams in his own words from paragraph 13 of his affidavit: "I aware that from about 1986 the arrangement for the mortgage payments for sugar workers including for Amos Williams was altered in that payments were no longer deducted from their wages but instead had to be paid at the head office of the Sugar Industry Housing Limited which was then at 16 - 24 Oxford Terrace, Kingston 10 in the parish of St. Andrew. I made numerous payments to that office for which I was given receipts in my name, copies of which are now produced .... Again these are the only receipts that I managed to secure when I was evicted from Reid's Pen, (sic) there are many more such receipts that I had to leave there."

37. Mr. Abrahams stated at paragraph 10 of his affidavit that he "was encouraged by the Defendant (sic) to move to Reid's Pen because she told me and I verily believed that her father, Amos Williams, who was working at Bernard Lodge sugar factory had qualified for a house under the sugar worker's (sic) housing co-operative but he could not afford to pay for it and so he offered it to her but she told me and I knew full that she in turn could not afford to pay for it. ... The Defendant (sic) asked me to pay for the acquisition of Reid's Pen and she promised that my name would be on the Certificate of Title."

38. The legal significance of Mr. Abrahams' assertion is as follows. First, he was promised an interest in the land and the legal estate holders are his trustees holding the land on trust for him. Second, such a trust would fail because there is no evidence in writing as required by the Statute of Frauds. Third, he acted to his detriment by paying the mortgage in reliance on the promise made to him. Fourth, the defendant is acting inequitably by back tracking from the promise made to him after he has acted to his detriment. Fifth, the court should recognise his proprietary interest and grant him a fifty percent interest. Needless to say, success for Mr. Abrahams depends on his credibility.

39. Mr. Abrahams also produced salary slips belonging to Mr. Amos Williams which he claimed were given to him by Mr. Williams as receipts. The evidence of Mr. Abrahams was that Mr. Williams and he agreed that when the mortgage payments were deducted from Mr. Williams' salary, Mr. Abrahams would reimburse him. This was done although, as he admitted under cross examination, he and Mr. Williams did not have any discussion from which it could be said that Mr. Abrahams would acquire a beneficial interest in the property if he assisted with the mortgage payments.

40. This salary slip receipt explanation was put to the test. Mr. Williams was asked in cross examination to identify on two of the salary slips the amounts that he said represented the mortgage deduction which would also represent the sum he paid Mr. Williams. Mr. Abrahams was unable to do this and confessed that he really could not identify the sum. I have noted that over fifty salary slips were placed before the court by Mr. Abrahams and he was unable to use any of them to support his assertion. This inability to substantiate his case by an actual demonstration from documents he produced to support his case naturally caused the court to have serious reservations about his credibility. The anxiety of the court was increased when he stated that he did not discuss the matter in any detail with Mr. Williams. What made Mr. Abrahams' testimony on this point unworthy of belief was that this arrangement, on his version of events, must have continued for at least seven or eight years. It will be recalled that the mortgage payments began some time around the late 1970s. This was by deduction from the wages of Mr. Abrahams. This was changed in 1986 according to Mr. Abrahams. How could such an arrangement continue for

such a long time without any detailed discussion between the parties? How could Mr. Abrahams be unable to point to a single pay slip and identify the mortgage payments? The best explanation for his inability to demonstrate his case from the **documents produced by him** is that there was no such arrangement.

41. This conclusion is reinforced by the following evidence. Mr. Abrahams said that Mr. Williams told him that it was his (Williams') name and his daughter's names that were on the title. Specifically, Mr. Abrahams said he asked if his name could be placed on the title and Mr. Williams told him that only the names of his daughter and himself are on the title. After saying this and in virtually the next breath Mr. Abrahams stated that he did not go far with Mr. Williams about getting his name on the title. Later on in cross examination Mr. Abrahams stated that it was not Mr. Williams who told him about his daughter's and his name on the title but he actually found out this when he went to Oxford Road. This is the location of the mortgagee. Presumably he went there to make a mortgage payment. His uncertainty and indecisiveness did not inspire confidence in his evidence.

42. The significance of the analysis so far is that there is no evidence that at the time of acquisition of the property any one agreed with Mr. Abrahams that he (Abrahams) would have any beneficial interest in the property. Also, although it is true that Miss Williams and Mr. Wilson were parties to the sale agreement and were liable on the mortgage, what the evidence of Miss Williams reveals is that Mr. Williams was really the person fully responsible for the mortgage payments and was the de facto purchaser when the property was acquired. In these circumstances it is unlikely that his daughter would have been making any arrangement with Mr. Abrahams to pay the mortgage when her father was able to make the payments. I reject Mr. Abrahams' assertion that he had any agreement with Miss Williams to acquire any beneficial interest in the property. I also conclude that he had no arrangement with Mr. Williams under which he would acquire any beneficial interest in the property and there is no evidence that he had any discussion with Mr. Wilson. Thus at the time of the acquisition Mr. Abrahams did not have any beneficial interest in the property.

43. In light of this just stated conclusion success for Mr. Abrahams now depends on his ability to show that after the acquisition an estoppel, a

Ramsden v Dyson situation or a constructive trust exists. His best hope lay in the undisputed fact that he paid $24,000 on account in respect of the mortgage.

44. Although both sides agree that the mortgage fell into arrears, neither party could recall when this was but the arithmetic does suggest that the accumulation of arrears began at least from 1993. The documentary evidence reveals that by 1997 it had become a serious problem for the mortgagee.

45. In the context of this case, an important question is, at what point did Mr. Abrahams become aware of the existence of the mortgage arrears? According to Mr. Abrahams, as already noted, his position is that he was the only person making the mortgage payments when he reimbursed Mr. Williams and from 1986 he began paying the mortgagees directly. Yet he did not or could not explain how the arrears arose. His affidavit and testimony on cross examination conveyed the clear impression that he had been a reliable payer of the mortgage installments. His evidence was that he went to the United States of America in February 1997 and he stayed there for three months instead of the one month that he had planned to be there. His unambiguous evidence is that he gave Miss Williams some $200 plus dollars to pay the mortgage while he was way. His affidavit states that on his return he found out that the mortgage was in arrears. He never admitted or stated that the mortgage was in arrears before he left Jamaica. The clear implication was that (a) the mortgage payments were up to date when he left for the United States; (b) he left money to pay the mortgage; (c) the mortgage was not paid during his absence; and (d) he discovered the non-payment on his return.

46. Mr. Stewart, who appeared for Mr. Abrahams, was forced to concede that three months of non-payment could not have generated this level of arrears because it is accepted that the mortgage payments were a few hundred dollars per month ($500 being the maximum amount paid per month based on the 1986-and-beyond receipts placed before the court) and not thousands. Mr. Stewart even accepted that if Mr. Abrahams returned and found these arrears, then the arrears must necessarily have been building up before he left. Mr. Stewart, though reluctant at first, eventually had to accept that this objective fact of the arrears is inconsistent with the impression of regular and consistent payments as projected by Mr.

Abrahams. Thus what we have from the person claiming to have been solely responsible for repaying the mortgage is unexplained arrears of $24,000.

47. Mr. Stewart's concessions were the inevitable outcome of the arithmetic of the matter. I examined the receipts tendered by Mr. Abrahams for the period when the mortgage payments were paid directly to the mortgagee I observed that the monthly payments were ranged from a low of $100 to a high of $500, but the vast majority were for sums of $250. Thus arrears of $24,000 could not have been accumulated in one, two or even three months. In fact, even taking the highest figure and making the generous assumption that the repayment was in fact $500 per month, it would take 48 months to generate arrears of $24,000, to say nothing of using a smaller figure. What this means is that if the arrears were $24,000 in early 1997, then this accumulation would have begun in 1993, assuming that the repayment was $500 per month. Using a sum of $250, it would take 96 months to build up the acknowledge level of arrears. This would be 8 years. I have used a monthly figure because the receipts tendered by Mr. Abrahams show that the repayment was monthly from 1986 onwards. Thus simple arithmetic demonstrates the unreliability of Mr. Abrahams' evidence.

48. I should point out that there is independent evidence to suggest that the arrears existed before Mr. Abrahams left Jamaica to the United States of America. The document casts serious doubt on his testimony that he was in fact away for three months. This document was produced by Mr. Abrahams. I refer to a memorandum exhibited to Mr. Abrahams' affidavit (CLA 4). It is an internal memorandum of the mortgagee from a Miss Joan Cunningham to Miss Maureen Cole. That memorandum is dated March 14, 1997. If Mr. Abrahams left for the United States of American in February 1997 and spent three months there, how could the memorandum indicate that he made a $14,000.00 payment on March 14, 1997? There is also another exhibit (CLA 5) dated March 19, 1997 which clearly states that Mr. Abrahams paid $10,000.00 to the mortgagee. Thus two things are apparent. First, the arrears existed will before 1997 and second, Mr. Abrahams did not spend three months in the United States if he had gone there in February 1997. If he had really spent three months in the United States then documents ought properly to have been dated, at the earliest, April 1997 or possibly May, but certainly not March. If indeed he was the only person paying the mortgage it necessarily follows that the arrears could only

have come about because he did not pay the mortgage; a fact he ought to have admitted if that were the truth of the matter. Had Mr. Abrahams really been making the mortgage payments in a timely way the arrears could not have occurred at all because he has never asserted that he was unable to make the payments and from this premise no arrears could have arisen. So what we have is an unexplained fact which based on Mr. Abrahams' evidence would have been an impossibility.

49. I conclude that Mr. Abrahams' is not to be believed when he claims that he alone was responsible for the mortgage payments. He is not to be believed on anything regarding the $24,000 except that it existed and he paid it. I accept Miss Williams' testimony that she asked him to pay the $24,000.00 mortgage and that the payment was a loan to her. This would suggest that at some point Mr. Amos Williams had stopped making mortgage payments and his daughter had taken up this responsibility. However, she explained that she became ill and was not able to work and so was unable to make the payments. Therefore Miss Williams' explanation provides a more plausible explanation for the arrears. Thus what Mr. Abrahams has is at best a personal claim against Miss Williams who is now the sole proprietor of the property because her son is now deceased. Mr. Abrahams has failed to establish that he has any proprietary claim to the property.

50. In light of my conclusion that Mr. Abrahams has been found wanting in crucial areas of the evidence I find that Miss Williams' explanation for his name on the receipts from around 1986 which was that he was given the money to pay the mortgage because he was working in Kingston is more reliable. Therefore, when he paid the mortgage at the mortgagee's office he was simply a bearer and not a person acquiring any equitable interest in the property.

51. Mr. Stewart submitted that Miss Williams' explanation for the acquisition particularly her ability to pay is unreliable and ought to be rejected. I make two observations. First, she and her son are the registered proprietors. Her son has now died and because they were registered as joint tenants, she takes the whole estate as the survivor. The policy of the law is that unless there is cogent evidence to the contrary, that is to say evidence that is internally consistent and has greater explanatory power than a competing explanation, the holder of the legal estate is also the holder of

the equitable interest. Of course, this is rebuttable and courts of equity have always permitted claimants to adduce evidence to show otherwise. In saying this I must not be taken as assenting to the proposition advanced by the House of Lords in ***Stack*** that there is a "considerable burden" on those who wish to establish that the equitable interest is held in a manner different from the legal estate and the division of the equitable interest does not follow the law (per Lord Walker at para. 14) and neither am I to be taken to be accepting Baroness Hale's proposition that "*burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon*" (para. 68). Nonetheless, there is still a legal and evidential burden on the claimant to adduce cogent evidence to displace the prima conclusion that is drawn from one's name appearing on the title deeds. If the evidence of the claimant falls under its own inconsistencies and lack of internal logic, I see no reason to consider at length the defendant's evidence when the claimant's case has already collapsed. I am not saying that Miss Williams' evidence is perfect. What I am saying is that Mr. Abrahams' case is in a muddle and where they conflict Miss William's testimony is more credible.

Other matters

52. It is legitimate to ask how Mr. Abrahams could have come by the salary slips and the receipts. I examine the evidence in order to provide an answer. In order to explain how it is that Mr. Williams would be giving Mr. Abrahams his pay slip, the claimant had this to say. Mr. Abrahams stated that he and Miss Williams were living together for over thirty years. The couple, on his account, first met in 1968 when he was living at Reece Road, St. Andrew and she was living at Elgin Road, St. Andrew. They began living together in the early 1970s and eventually moved to the disputed property where he lived until he was ejected.

53. On the other hand, Miss Williams states that she met Mr. Abrahams in his capacity as a customer at the bar and from there a relationship developed but that it lasted only one year. Her reason for ending the relationship is that Mr. Abrahams succumbed too readily to the beckoning hand of distilled spirits. Her explanation for Mr. Abrahams' presence at the disputed property was that he was evicted from his Reece Road address and she took him in because she wanted to assist him. I accept Miss Williams'

evidence on this point. What his residence at the property did was to provide Mr. Abrahams with an opportunity to find out about the acquisition of the property and the opportunity to take documents to support his claim.

54. Mr. Abrahams was eventually removed from the property by Mr. Wilson. It appears that the years did not diminish Mr. Abrahams' love of brewed, distilled and fermented beverages. This habit and accompanying behaviour proved too much for the other occupants of the house and he was finally ejected from the property in 2003 by Mr. Wilson.

Conclusion

55. Mr. Abrahams has failed to establish any sound factual basis for his claim to an equitable interest in the disputed property. His claim is dismissed in its entirety with costs to Miss Williams to be agreed or taxed.