



[2024] JMSC Civ 169

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. SU 2024 CV 00659

BETWEEN SHALANDA COLEY CLAIMANT

**AND ZADIA-KAY SMITH 1st DEFENDANT/
ANCILLARY DEFENDANT**

**AND MURLINE L. COLEY 2nd DEFENDANT/
(ADMINISTRATRIX OF THE ANCILLARY CLAIMANT
ESTATE OF DAMIAN COLEY)**

IN CHAMBERS

**Ms Yualande Christopher instructed by Mesdames Yualande Christopher &
Associates for the Claimant**

**Mr Orville Morgan instructed by Messrs. Orville C. Morgan & Company for the 1st
Defendant/Ancillary Defendant**

**Dr Marcus Goffe and Mrs Danielle Andrade Goffe instructed by Messrs. Goffe Law
for the 2nd Defendant/Ancillary Claimant**

Heard: September 25, 2024, October 28, 2024, and November 29, 2024

**Civil procedure – Summary judgment – Interlocutory application for summary
judgment – Whether summary judgment ought properly to be granted in favour of
the claimant on the claim – Whether summary judgment ought properly to be**

granted in favour of the ancillary claimant on the ancillary claim – The approach of the court in dealing with an application for summary judgment – Whether the defence to the claim has a reasonable prospect of success – Whether the defence to the ancillary claim has a reasonable prospect of success

Burden – Burden of proof – Standard – Standard of proof

Land – Joint tenancy – Land held as joint tenants – Severance of joint tenancy – Methods by which a joint tenancy may be severed – Whether the 1st defendant intended to sever the joint tenancy – Whether there is sufficient evidence which demonstrates an intention to sever the joint tenancy on the part of the 1st defendant – Whether there was an agreed intention between joint tenants to sever the joint tenancy

Specific performance – Part performance – Whether there are sufficient acts of part performance which are unequivocally connected to the land such as to demonstrate an intention to sever the joint tenancy – Whether the death of a joint tenant negates the agreed intention to sever the joint tenancy

Equity – Availability of an equitable remedy – Civil Procedure Rules, 2002, as amended, rule 15.2

A. NEMBARD J

INTRODUCTION

[1] This matter raises important considerations in relation to the legal and equitable interests held by the parties in the property being ALL THAT parcel of land part of Twickenham Park and Dobsons Farm, being the Lot numbered 295 and known as Strata Lot 71, Apartment 3R11 Union Estates, Phase 3, Twickenham Park, Spanish Town, in the parish of Saint Catherine and being the land comprised in Certificate of Title registered at Volume 1471 Folio 709 of the Register Book of

Titles (“the subject property”). Mr Damian Michael Coley, now deceased,¹ and the 1st Defendant/Ancillary Defendant, Zadia-Kay Gillian Smith, are the registered proprietors and co-owners of the subject property. They hold as joint tenants in fee simple.² The Claimant, Shalanda Coley, asserts that that joint tenancy was severed during the lifetime of Mr Damian Coley, and that she [Shalanda Coley] holds an equitable interest in the subject property. Ms Shalanda Coley further asserts that the 2nd Defendant/Ancillary Claimant, Murlin L. Coley, holds the legal estate in the subject property, by virtue of her capacity as the Administratrix ad litem for the Estate of the now deceased Damian Coley.³

[2] There are four (4) interlocutory applications before the court which remain extant. These are as follows: -

- i. The Claimant’s Amended Notice of Application for Injunctive Relief, which was filed on 2 September 2024.
- ii. The 2nd Defendant/Ancillary Claimant’s Notice of Application for Court Orders, which was filed on 12 September 2024.
- iii. The 2nd Defendant/Ancillary Claimant’s Notice of Application for Court Orders for Summary Judgment on Ancillary Claim, which was filed on 11 October 2024.
- iv. The Claimant’s Notice of Application for Summary Judgment/Striking Out, which was filed on 23 October 2024.

[3] This judgment is intended to treat with the 2nd Defendant/Ancillary Claimant’s Notice of Application for Court Orders for Summary Judgment on Ancillary Claim, which was filed on 11 October 2024. Additionally, Learned Counsel Ms Yualande

¹ See – Exhibits “SC1” and “SC2”, which contain the copy of the funeral program for Damian Coley, dated Saturday 17 February 2024, and the copy of the Burial Order, dated 31 January 2024, respectively referred to in the Affidavit of Shalanda Coley in Support of Application for Injunctive Relief, which was filed on 21 February 2024.

² See – Transfer No. 2432268 registered on the 26th day of September 2022 as noted on the Duplicate Certificate of Title, registered at Volume 1471 Folio 709 of the Register Book of Titles.

³ Damian Coley died intestate on or around 28 November 2023. Ms Murlin L. Coley is the mother of the deceased Damian Coley and Ms Shalanda Coley. On 11 March 2024, The Honourable Miss Justice T. Carr appointed Ms Murlin Coley as Administrator ad Litem of the estate of Damian Michael Coley for this matter.

Christopher urged the Court to also consider and determine the Claimant's Notice of Application for Summary Judgment/Striking Out, which was filed on 23 October 2024, and to do so on paper. No objection was raised to that recommendation. The Court finds it convenient to treat with both applications in this judgment, as the determination of each necessitates a consideration and resolution of the same issues.

THE APPLICATIONS

[4] By way of the Notice of Application for Court Orders for Summary Judgment on Ancillary Claim, which was filed on 11 October 2024, the 2nd Defendant/Ancillary Claimant seeks the following Orders of the Court: -

1. That summary judgment be entered for the 2nd Defendant/Ancillary Claimant against the 1st Defendant/Ancillary Defendant on the Ancillary Claim and the Ancillary Counterclaim.
2. That a Declaration be made that the joint tenancy between the 1st Defendant and the deceased Damian Michael Coley was severed.
3. That a Declaration be made that the 1st Defendant/Ancillary Defendant holds the legal estate in Apartment 3R11 Union Estate, Phase 3, Twickenham Park, Spanish Town, in the parish of Saint Catherine, being the land comprised in Certificate of Title registered at Volume 1471 Folio 709 of the Register Book of Titles, on trust for the benefit of herself, the Estate of Damian Michael Coley, and the Claimant.
4. That an Order be granted for specific performance of the Agreement for Mortgage Contribution (Agreement for Sale).

5. That an Order be granted that the Claimant be allowed to complete the Agreement for Mortgage Contribution (Agreement for Sale), to purchase the 1st Defendant/Ancillary Defendant's one-half interest in the subject property, within One Hundred and Twenty (120) days of the date of the Orders herein.
6. That an Order be granted that, if the Claimant fails to complete the Agreement for Mortgage Contribution (Agreement for Sale), to purchase the 1st Defendant/Ancillary Defendant's one-half interest in the subject property, within One Hundred and Twenty (120) days of the date of the Orders herein, then the 1st Defendant/Ancillary Defendant be allowed to purchase the 2nd Defendant/Ancillary Claimant's one-half interest in the subject property within One Hundred and Twenty (120) days.
7. That an Order be granted that the 1st Defendant/Ancillary Defendant is to bear the stamp duty (if any), registration fee, outstanding mortgage, transfer tax, cost of preparing the Agreement for Sale and all usual and all reasonable charges and fees associated with the sale of the 1st Defendant/Ancillary Defendant's one-half interest in the subject property.
8. That an Order be granted that the Registrar of the Supreme Court is empowered to sign any and all documents to effect any of the Court's Orders herein, in the event that the 1st Defendant/Ancillary Defendant fails or refuses to do so within five (5) days of being requested to do so.
9. Alternatively, Damages for Breach of Contract.
10. Interest pursuant to the Law Reform (Miscellaneous Provisions) Act.

11. Costs, including Attorneys' costs; and

12. Such further and/or other relief as this Honourable Court deems fit.

[5] These Orders are sought on the following bases: -

- i. That the 1st Defendant/Ancillary Defendant's Defence does not factually dispute the Ancillary Claim and discloses no reasonable grounds, in fact or in law, for defending the Ancillary Claim.
- ii. That the key facts are undisputed and, having regard to the evidence before the court, there is no reasonable prospect of the 1st Defendant/Ancillary Defendant successfully disputing them.
- iii. That the 1st Defendant/Ancillary Defendant has no real prospect of successfully defending the Ancillary Claim or of succeeding on the Counterclaim.
- iv. That the 1st Defendant/Ancillary Defendant's Counterclaim fails to comply with the requirements of Part 8 of the Civil Procedure Rules (CPR).
- v. That the 1st Defendant/Ancillary Defendant's Counterclaim discloses no reasonable grounds for bringing a Counterclaim.
- vi. That the joint tenancy was severed during the lifetime of the joint tenants, by virtue of (i) alienation by one of the joint tenants, Damian Michael Coley, of his share in the property; (ii) mutual agreement of the joint tenants; and/or (iii) course of dealings between the joint tenants.
- vii. That the clear weaknesses of and the absence of any defence to the Ancillary Claim justify the relief sought.

- viii. That nothing in the 1st Defendant/Ancillary Defendant's Defence to the Ancillary Claim would disentitle the 2nd Defendant/Ancillary Claimant to the relief sought. Therefore, there is no need for a trial and Judgment ought to be entered for the 2nd Defendant/Ancillary Claimant, summarily.
- ix. That there is no real prospect of oral evidence affecting the court's assessment of the facts, as all material facts have been pleaded and/or deponed to and are already before the court.
- x. That it is in the interest of justice and consistent with the overriding objectives of the Civil Procedure Rules, to deal with cases justly, expeditiously and fairly, saving on the expenses of the parties and the court's resources.

[6] For her part, the Applicant/Claimant, Shalanda Coley, in her Notice of Application for Summary Judgment/Striking Out, which was filed on 23 October 2024, seeks the following Orders of the Court: -

- 1. That summary judgment be granted to the Applicant/Claimant against the Respondent/1st Defendant, Zadia-Kay Smith, on the Claim and Counterclaim.
- 2. That, in the alternative, the Respondent/1st Defendant's Defence be wholly struck out for disclosing no lawful or reasonable grounds for defending the Claimant's Claim and for bringing the Ancillary Claim.
- 3. That costs be paid to the Applicant/Claimant to be agreed or taxed.
- 4. Such further and other Order(s)/direction(s) as this Honourable Court deems fit.

[7] The application is made on the bases that: -

- i. The Orders are sought pursuant to Rule 15.2 of the Civil Procedure Rules, 2006 (Amended).
- ii. Pursuant to Rule 15.6 of the Civil Procedure Rules, 2006 (Amended), the court has the power to strike out or dismiss the Respondent/1st Defendant's Defence in whole or in part.
- iii. The Respondent/1st Defendant has no real prospect of defending the Claim brought against her by the Applicant/Claimant.
- iv. The deceased and the Respondent/1st Defendant's clear and irrefutable conduct demonstrates their mutual decision to sever the joint tenancy for disposal of the Respondent/1st Defendant's one-half share.
- v. The deceased and the Respondent/1st Defendant, jointly and severally, by their conduct, action and words, severed the joint tenancy.
- vi. The legal issues are narrow and clear and can be resolved with the documentary evidence available to all the parties.
- vii. The principle of estoppel prevents the Respondent/1st Defendant from reneging on her agreement to dispose of her share and prevents her from unfairly benefiting from the untimely death of the deceased.
- viii. Pursuant to rule 2.2 of the Civil Procedure Rules, the overriding objective encourages this Honourable Court to dispose of cases expeditiously and justly, having regard to the court's limited resources, particularly in instances such as these where the facts demonstrate that the Respondent/1st Defendant has no reasonable prospect of succeeding, if the matter were to advance to trial.

THE ISSUES

- [8]** The following issues are determinative of the applications: -
- i. Whether the 1st Defendant/Ancillary Defendant has a real prospect of successfully defending the Claim.
 - ii. Whether the 1st Defendant/Ancillary Defendant has a real prospect of successfully defending the Ancillary Claim.
- [9]** To determine the issues which have been identified above, the following sub-issues must also be resolved: -
- a. Whether Ms Smith intended to sever the joint tenancy which existed between herself and the now deceased, in respect of the subject property, during the lifetime of the now deceased.
 - b. Whether there existed a valid agreement for sale between the parties in relation to the sale and purchase of Ms Smith's one-half share in the subject property.
 - c. Whether there is evidence of sufficient acts of part performance which are unequivocally connected to the subject property.
 - d. Whether there is an equitable remedy which is available to the Claimant.

BACKGROUND

- [10]** The applications are made against the background that Mr Damian Michael Coley ("the now deceased") and Ms Zadia-Kay Gillian Smith lived at the subject

property as husband and wife since 2012. The title to the subject property was not transferred to them until 26 September 2022.⁴

- [11] In or around 2017, the marriage between the now deceased and Ms Smith broke down irretrievably and they separated. It is alleged that the now deceased left the subject property. In or around 2018, the now deceased and Ms Smith were divorced. In the latter part of 2018, the now deceased returned to the subject property and resumed living there. Ms Shalanda Coley avers that Ms Smith subsequently moved out of the subject property, in or around 2020 or 2021.⁵
- [12] In or around 2022, Ms Smith is alleged to have informed the now deceased that she wanted to sell her one-half share of the subject property, suggesting that the now deceased either purchases her one-half share from her directly or identifies someone else to take over her [Ms Smith's] portion of the mortgage for the subject property. Subsequently, Ms Smith and the now deceased commenced discussions for Ms Smith to sell and to assign her one-half interest in the subject property to the now deceased. It is further alleged that Ms Smith and the now deceased entered discussions to this effect and agreed that Ms Smith would sell and assign her one-half interest in the subject property to the now deceased. Ms Shalanda Coley contends that Ms Smith took active and decisive steps to sever the joint tenancy. Ms Shalanda Coley contends further that this intention is evidenced by the documentary evidence in the present instance, which includes letter dated 6 September 2022, addressed to the now deceased, which was purportedly sent by Mr Wesley Watson, Attorney-at-Law, for and on behalf of Ms Smith. Additionally, there is evidence that a valuation report, dated 5 March 2023, in respect of the subject property, was obtained, and which was jointly commissioned by Ms Smith and the now deceased.⁶

⁴ See – Paragraphs 2 and 3 of the Particulars of Ancillary Claim, which was filed on 17 June 2024.

⁵ See – Paragraph 4 of the Particulars of Ancillary Claim, which was filed on 17 June 2024.

⁶ See – Exhibit “SC4”, which contains the letter dated 6 September 2022 addressed to Mr Coley from Mr Wesley Watson, Attorney-at-Law, regarding the subject property, proposing two options regarding Ms Smith's share of the subject property. See also, Exhibit “SC5” which contains a copy of the Valuation Report dated 5 March 2023 for the Union Estate Apartment (“the subject property”), referred to in the Affidavit of Shalanda Coley in support of Application for Injunctive Relief, which was filed on 21 February 2024.

- [13] Subsequent to the preparation of the valuation report, in or around April 2023, Ms Shalanda Coley asserts that, herself, Ms Smith and the now deceased commenced discussions to have the former assume control of Ms Smith's portion of the mortgage for the subject property, as assignee. On or about 15 December 2023, Ms Shalanda Coley was informed that she would become eligible for a mortgage from the National Housing Trust,⁷ and with this in mind, she moved into the subject property, together with her daughter, to live with her brother, the now deceased. In reliance on this agreement, Ms Shalanda Coley avers that she paid the deposit in the sum of Four Hundred and Twenty Thousand Dollars (\$420,000.00), to the now deceased, towards the purchase price for the acquisition of the subject property, that she paid outstanding property taxes in respect of the subject property, and that she effected repairs and made improvements to the subject property.⁸ Ms Shalanda Coley further avers that she was living with the now deceased and her daughter, at the subject property, until the untimely passing of the now deceased, on or about 28 November 2023. Ms Shalanda Coley asserts that the now deceased died intestate and that, by way of an Order of the court, Ms Murlin Coley was appointed the Administratrix ad litem of the Estate of the now deceased.⁹
- [14] Ms Shalanda Coley maintains that, in or around September 2023, Ms Smith directed her Attorney-at-Law to give effect, in writing, to the parties' oral agreement. This is evidenced by the unsigned Agreement for Mortgage Contribution, which Ms Shalanda Coley contends was prepared by Ms Smith's Attorney-at-Law.¹⁰

⁷ See – Exhibit “SC7”, which contains a copy of the letter from the National Housing Trust dated 21 December 2023 and addressed to Ms Shalanda Coley detailing her eligibility for an Open Market Loan, in the total sum of \$7,500,000.00, referred to in the Affidavit of Shalanda Coley in Support of Application for Injunctive Relief, which was filed on 21 February 2024.

⁸ See – Paragraph 18 of the Particulars of Claim, which was filed on 21 February 2024.

⁹ See – Formal Order, filed on 12 March 2024, where The Honourable Miss Justice T. Carr appointed Ms Murlin Coley as Administratrix ad litem for the Estate of Mr Damian Coley.

¹⁰ See – Exhibit “SC6”, which contains a copy of the unsigned Agreement for Mortgage Contribution, referred to in the Affidavit of Shalanda Coley in Support of Application for Injunctive Relief, which was filed on 21 February 2024.

[15] Subsequent to the death of the now deceased, Ms Shalanda Coley asserts that Ms Smith contacted her and indicated to her an intention to renege on the agreement previously brokered by the parties. Consequently, Ms Shalanda Coley sought legal advice and lodged Caveat No. 2530709 against the title for the subject property.¹¹

[16] Ms Shalanda Coley initiated the substantive claim, by way of a Claim Form, which was filed on 20 February 2024. By virtue of that Claim Form, she seeks Orders against the 1st Defendant as follows: -

1. That a Declaration be made that the joint tenancy between the 1st Defendant, Zadia-Kay Smith, and the deceased, Damian Coley, is severed, by the mutual consent of the 1st Defendant and the deceased and/or in the alternative, by the conduct of the deceased operating on his own share.
2. That a Declaration be made that the 1st Defendant holds the legal estate on trust for the benefit of herself and the 2nd Defendant (the deceased's estate), in equal shares in the property registered at Volume 1471 Folio 709 (referred to as "Property at Union Estate").
3. That a Declaration be made that the Claimant shall exercise the first option of purchasing the 1st Defendant's half interest in the said property, at a purchase price of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), the option to be exercised within One Hundred and Twenty (120) days of the date of the Orders herein.
4. That, in the alternative, if the Claimant fails to exercise the option within One Hundred and Twenty (120) days, the property be sold

¹¹ See – Paragraph 19 of the Affidavit of Shalanda Coley in support of Application for Injunctive Relief, which was filed on 21 February 2024.

to the 1st Defendant, who shall exercise that option within One Hundred and Twenty (120) days.

5. That an Order be granted that the 1st Defendant is to bear the stamp duty (if any), registration fee, outstanding mortgage, Transfer tax, cost of preparing the Agreement for Sale and all usual and all reasonable charges and fees associated with the sale of a vendor's half interest, in the transfer of her interests to the Claimant.
6. That a Declaration be made that the Attorneys-at-Law with Carriage of Sale be Yualande Christopher & Associates, and that the Attorney's legal fee of three percent (3%) of the purchase price be borne by the 1st Defendant, to conduct the sale. Further, that the Claimant shall bear her own Attorney's costs and closing costs for the purchase of the 1st Defendant's half share in the said property.
7. That an Order be granted that the Registrar of the Supreme Court is empowered to sign any and all documents to effect any of the court's Orders herein, in the event that the Respondent neglects or refuses to do so within five (5) days of being requested to do so by the relevant Attorney-at-Law.
8. That an Order be granted empowering the Attorney with Carriage of Sale to distribute the net proceeds of sale to the 1st Defendant's Attorneys-at-Law, on her behalf.
9. That a Declaration be made that the Claimant is entitled to be registered as the legal and equitable owner of the property registered at Volume 1471 Folio 709 of the Register Book of Titles.

[17] Ms Smith, in her Defence, which was filed on 4 April 2024, initiated a Counterclaim against the Claimant, with the major thrust being that the Claimant

has no cause of action and that she is the legal surviving joint tenant of the subject property.

[18] For her part, the 2nd Defendant/Ancillary Claimant filed an Ancillary Claim Form and Particulars of Ancillary Claim, each filed on 17 June 2024. By way of those documents, Ms Murlin Coley seeks the following Orders of the Court: -

1. A Declaration that the joint tenancy between the 1st Defendant and the deceased Damian Michael Coley is severed.
2. A Declaration that the 1st Defendant holds the legal estate on trust for the benefit of herself, the Estate of Damian Michael Coley, and the Claimant.
3. An Order for specific performance of the Agreement for Mortgage Contribution (Agreement for Sale).
4. An Order that the Claimant be allowed to complete the Agreement for Mortgage Contribution (Agreement for Sale) to purchase the 1st Defendant's half interest in the property within one hundred and twenty (120) days of the date of the orders herein.
5. An Order that if the Claimant fails to complete the Agreement for Mortgage Contribution (Agreement for Sale) to purchase the 1st Defendant's half interest in the property, within one hundred and twenty (120) days of the date of the orders herein, the 1st Defendant be allowed to purchase the 2nd Defendant's half interest in the property within one hundred and twenty (120) days.
6. An Order that the 1st Defendant is to bear the stamp duty (if any), registration fee, outstanding mortgage, transfer tax, cost of preparing the Agreement for Sale and all usual and all reasonable

charges and fees associated with the sale of the 1st Defendant's half interest in the property.

7. An Order that the Registrar of the Supreme Court is empowered to sign any and all documents to effect any of the Court's orders herein in the event that the 1st Defendant fails or refuses to do so within five days of being requested to do so.
8. Alternatively, Damages for breach of contract.
9. Interest pursuant to the Law Reform (Miscellaneous Provisions) Act.
10. Costs, including Attorneys' costs; and
11. Such further and/or other relief as this Honourable Court deems fit.

THE LAW

The law in relation to summary judgment

[19] Summary judgment is the mechanism by which the court, on an application, can identify and filter out those matters that do not have a real chance of success. It is a discretionary remedy utilized by the court, in which the court may decide on a claim or a particular issue of a claim without a trial. This procedure allows the court to promptly and expeditiously dispose of a case without a trial. This procedure is governed by Part 15 of the Civil Procedure Rules. Summary judgment is employed in cases or defences that are weak on the facts and applies to cases and defences based on misconceived points of the law. Striking out is aimed at weakness in the manner in which the issues are set out in the statements of case.¹² Notably, if the claimant's statement of case is found to contain a coherent set of facts which disclose a legally recognizable claim

¹² See – Gilbert Kodilinye and Vanessa Kodilinye, Summary Judgment, **Commonwealth Caribbean Civil Procedure**, Third Edition, Routledge Cavendish, 2009.

against the defendant, the defendant is entitled by the Civil Procedure Rules to try and persuade the court that, notwithstanding that fact, the claimant has no real prospect of success; it is at that stage that the court will normally consider any evidence that the parties may adduce.¹³

The approach of the court on an application for summary judgment

- [20] The court may grant summary judgment on the claim or on a particular issue if it considers the two grounds that are prescribed by Rule 15.2 of the Civil Procedure Rules. These are as follows: -

Grounds for summary judgment

15.2 *"The Court may give summary judgment... if it considers that-*

(a) the claimant has no real prospect of succeeding on the claim or the issue; or

(b) the defendant has no real prospect of successfully defending the claim or the issue."

The burden and standard of proof

- [21] When considering whether there is a real or realistic prospect of success, the court ought to consider the evidence which can reasonably be expected to be available at the trial - or the lack of it; it is not appropriate for the Court to undertake an examination of the evidence (without a trial) and adopt the standard applicable to a trial (namely, the balance of probabilities).¹⁴
- [22] The standard of proof in civil cases is on a balance of probabilities. The case of **Miller v Minister of Pensions**,¹⁵ particularly the dicta of Denning J (as he then was) clarifies how the burden of proof is discharged in civil cases generally. He stated as follows: -

¹³ **Chief Constable of Kent v. Rixon** [2000] All ER (D) 476, CA, Brooke LJ

¹⁴ Lexis Nexis, Summary Judgment, Di Mambro (ed), **The Caribbean Civil Court Practice**, Butterworths Law, 2011.

¹⁵ [1947] 2 All ER 372

“If the evidence is such that the tribunal can say ‘we think it more probable than not’ the burden is discharged, but if the probabilities are equal, it is not.”

[23] The burden of proof in applications for summary judgement rests on the applicant to prove that the respondent's case has no real prospect of success. Once the applicant demonstrates this, it is then for the respondent who intends to counter such an application to show that he has a case that is better than merely arguable.¹⁶ He must satisfy the court that there is an issue or question in dispute which ought to be tried or that there ought for some reason to be a trial. Unless the respondent does so, the court may give such judgment for the plaintiff against the defendant as may be just having regard to the nature of the remedy or relief claimed.¹⁷

[24] Paragraph 7 of the authority of **Celador Productions Limited v Melville Boone and others**,¹⁸ is instructive to an understanding of which party has the burden of discharging the standard of proof on an application for summary judgment. The Vice-Chancellor, Sir Andrew Morritt, distilled the following principles: -

“a) it is for the applicant for summary judgment to demonstrate that the respondent has no real prospect of success in his claim or defence as the case may be;

b) a “real” prospect of success is one which is more than fanciful or merely arguable;

c) if it is clear beyond question that the respondent will not be able at trial to establish the facts on which he relies then his prospects of success are not real; but

d) the court is not entitled on an application for summary judgment to conduct a trial on documents without disclosure or cross-examination.”

¹⁶ See – **ED&F Man Liquid Products Ltd v Patel and another** [2003] EWCA Civ 472

¹⁷ See – Halsbury's Laws of England (4th edn, 2003) vol 37, para 413

¹⁸ [2004] EWHC 2362 (CH)

Real prospect of success

[25] 'Real prospect of success' is the threshold that an applicant is required to establish to convince a court that a summary judgment should be given in a claim or on a particular issue. The relevant principles which serve to guide the court in summary judgment applications can be gleaned from a multitude of well-known and oft-cited cases, some of which are explored below.

[26] The dicta of Lord Woolf in the oft-cited case of **Swain v Hillman**¹⁹ is instructive. Lord Woolf is quoted at paragraph 7 as follows: -

7. "The word 'real' distinguishes fanciful prospects of success... they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."

[27] Further, at paragraph 20, Lord Woolf had the following to say: -

20. ... "the proper disposal of an issue under Part 24²⁰ does not involve the judge conducting a mini trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success, either way, to be disposed of summarily."

[28] **Three Rivers District Council v Bank of England (No 3)**,²¹ is another hallmark case on the procedure which guides the court in its consideration of any application for summary judgment. In considering the term 'real prospect of success', Lord Hutton stated that: -

"The important words are 'no real prospect of succeeding'. It requires the judge to undertake an exercise of judgment. He must decide whether to exercise the power to decide the case without a trial and give Summary Judgment. It is a 'discretionary' power; that is, one where the choice whether to exercise the power lies within the jurisdiction of the judge. Secondly, he must carry out the necessary exercise of assessing the prospects of success of the relevant party. If

¹⁹[2001] 1 All ER 91

²⁰ Part 24 of the UK Civil Procedure Rules is similar to Part 15 of the Jamaican Civil Procedure Rules.

²¹ [2001] UKHL 16

he concludes that there is no 'real prospect' he may decide the case accordingly."

- [29] Lord Hobhouse of Woodborough also stated in **Three Rivers** that the criterion which the judge must apply under the rule is not one of probability; it is the absence of reality.
- [30] Consequently, the respondent to an application for summary judgment is required to demonstrate that there is some "prospect", or in other words a chance of success, if they hope to defeat this application. The court must also be convinced that these prospects are 'real', which eliminates prospects which may be falsified, fanciful or imaginary. The inclusion of the word "real" means that the respondent must have a case which is better than merely arguable (**International Finance Corp v Ute Africa Sprl [2001] C.L.C 1361** and **ED&F Man Liquid Products Ltd v. Patel [2003] EWCA Civ 472**).²²

The law in relation to joint tenancies

- [31] Joint Tenancy is one of the two types of ownership, the other being tenancy-in-common. Joint tenancy is distinguishable from tenancy-in-common, as the right of survivorship²³ (*jus accrescendi*) defines whereas tenancy-in-common does not have this right. Joint tenancy is also defined by the four unities, namely, the unity of possession²⁴, unity of interest²⁵, unity of title²⁶ and unity of time²⁷ and all four unities must be present for a joint tenancy to be determined.

²² Civil Procedure, 2016, Volume 1, at pages 686 and 687

²³ According to **Megarry & Wade** 8th Edition, page 489, paragraph 13-003: *"On the death of one joint tenant, his interest in the land passes to the other joint tenants by the right of survivorship (jus accrescendi). This process continues until there is one survivor, who then holds the land as sole owner. A joint tenancy cannot pass under the will or intestacy of a joint tenant. In each case, the right of survivorship takes precedence. It is often said therefore that each joint tenant holds nothing by himself and yet nothing depends upon whether or not he is the last joint tenant to survive."*

²⁴ **Megarry & Wade** 8th Edition, page 490, paragraph 13-005: *"...this means that a co-owner cannot point to any part of the land as his own to the exclusion of the others."*

²⁵ **Megarry & Wade** 8th Edition, page 491, paragraph 13-006: *"...the interest of each joint tenant is the same in extent nature and duration, for in theory of law they hold just one estate."*

²⁶ **Megarry & Wade** 8th Edition, page 493, paragraph 13-007: *"Each joint tenant must claim his title to the land under the same act or document. This requirement is satisfied if all the tenants acquired their rights by the same conveyance or if they simultaneously took possession of land and acquired title to it by adverse possession."*

[32] Conversely, with tenancy in common, the following features are definitive: -

- i. The tenants hold in undivided shares as each tenant in common holds a distinct share. The only thing that brings tenants in common into co-ownership is that both have shares in a single property which has not yet been divided among them;
- ii. There is no right of survivorship: the size of each tenant's share is fixed once and for all and is not affected by the death of one of their companions. When a tenant in common dies, interest passes under his will or intestacy, for his undivided share is his to dispose of as he wishes;
- iii. Only the unity of possession is essential.

[33] The learned authors of **Megarry & Wade**, 8th Edition are quoted as follows: -

*"The right of survivorship does not mean that a joint tenant cannot dispose of his interest in the land independently. He has full power of alienation inter vivos, though if, for example, he conveys his interest, he destroys the joint tenancy by severance and turns his interest into a tenancy in common. But he must act in his lifetime, for a joint tenancy cannot be severed by will."*²⁸

The methods of severing a joint tenancy

[34] Vice Chancellor Sir W Page Wood, in the authority of **Williams v Hensman** (1861), made the following pronouncements: -

"A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund – losing, of course, at the same time, his own right of survivorship. Secondly, a joint tenancy

²⁷ **Megarry & Wade** 8th Edition, page 493, paragraph 13-008: *"The interest of each tenant must vest at the same time. This does not necessarily follow from unity of title."*

²⁸ See page 490, paragraph 13-003

*may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been affected, as happened in the cases of *Wilson v Bell* and *Jackson v Jackson*.”*

- [35] The dicta of Thompson-James J, in the authority of **Sean Greaves and Anor v Calvin Chung**, is also instructive. At paragraphs [49] to [51] the learned judge made the following pronouncements: -

“[49] Joint tenancy is a method of holding interest in registered land that is characterized by the presence of four unities – possession, interest, title and time – as well as the right of survivorship. The authorities indicate that the right of survivorship is not absolute, and each party may dispose of his or her interest as they please during their lifetime. Before this can be done, however, the joint tenancy must be converted into a tenancy in common by way of severance of the joint tenancy [Williams v Hensman (1861) 70 ER 862].

[50] The Registration of Titles Act does not make specific provision as to the severance of a joint tenancy.

[51] It has long been accepted by our courts that the methods of severing a joint tenancy are as outlined by the common law in the case of Williams v Hensman (supra). This was confirmed by the Court of Appeal in the decision of Sunshine Dorothy Thomas, Winsome Blossom Thompson (Executrices of the estate of Leonard Adolphus Brown, deceased) & Owen Brown v Beverley Davis [2015] JMCA Civ 22. In approving its earlier judgment, per Morrison JA in Carol Lawrence & Others v Andrea Mahfood [2010] JMCA Civ 38, the Court of Appeal outlined the following principles as to severance of a joint tenancy as enunciated by Page-Wood VC in William v Hensman (at page 867):

“A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may

create a severance as to that share. The right of each joint tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund – losing, of course, at the same time, his own right of survivorship.

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

ANALYSIS AND FINDINGS

[36] In the present instance, the Court is guided by the pronouncements of the court in the authority of **Williams vs Hensman**, in respect of the methods by which a joint tenancy may be severed. The methods by which a joint tenancy may be severed were identified as follows: -

1. By an act of any one of the persons interested operating upon his own share may create a severance as to that share (through disposition of his interest by one of the joint tenants).
2. By mutual agreement.
3. By any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common.

- [37] On a preponderance of the evidence, this Court is of the view that there was a clear and unequivocal intention on the part of Ms Smith to sever the joint tenancy between herself and the now deceased in respect of the subject property.
- [38] The Court finds that, during the lifetime of the now deceased, there was an agreed intention between Ms Smith and the now deceased, that the now deceased would acquire her one-half share in the subject property.
- [39] The Court also finds that there were sufficient acts of part performance which were unequivocally connected to the subject property. This includes identifying a replacement co-applicant for the purpose of the continuation of the mortgage for the subject property, putting Ms Shalanda Coley in possession of the subject property, the letter dated 6 September 2022, from Ms Smith's Attorney-at-Law, and the Proposed Mortgage Agreement.
- [40] Additionally, the Court finds that there is cogent evidence before it of an oral agreement between Ms Smith and the now deceased, during the lifetime of the now deceased, that the now deceased would acquire her one-half share in the subject property. The Court finds that this oral agreement is supported by sufficient memoranda in writing, for example, the letter which was prepared by their joint Attorneys-at-Law which indicates that Ms Smith's one-half share in the subject property is to be acquired by the now deceased solely. This letter constitutes the joint instructions in writing of Ms Smith and the now deceased, duly executed by them, that Ms Smith's one-half share in the subject property is to be acquired by the now deceased solely.
- [41] Furthermore, the Court finds that there is cogent evidence before it of the value, which is ascribed to the subject property, the subject of the agreement between Ms Smith and the now deceased. The Court so finds on the basis of the valuation report which was jointly commissioned by Ms Smith and the now deceased, which ascribes a value to the subject property.
- [42] The Court finds that, in the absence of a duly executed Agreement for Sale, the oral agreement between Ms Smith and the now deceased, that the now

deceased would acquire Ms Smith's one-half share in the subject property solely, is sufficiently evidenced in writing.

- [43] The Court equally finds that there is no evidence before it which suggests that there was a resiling from this agreement by either Ms Smith or the now deceased, or both.
- [44] Consequently, the Court finds that Ms Shalanda Coley has demonstrated, on a preponderance of the evidence, that the applicants have established that Ms Smith does not have a defence to the Claim or Ancillary Claim, which has a real prospect of success.
- [45] In the result, the Court finds that the joint tenancy, in respect of the subject property, was severed during the lifetime of the now deceased and that the equitable remedy of specific performance would avail Ms Shalanda Coley.

DISPOSITION

- [46] The Court makes the following Orders on the 2nd Defendant/Ancillary Claimant's Notice of Application for Court Orders for Summary Judgment on Ancillary Claim, which was filed on 11 October 2024: -
- i. That summary judgment is entered in favour of the 2nd Defendant/Ancillary Claimant against the 1st Defendant/Ancillary Defendant on the Ancillary Claim and the Ancillary Counterclaim.
 - ii. That it is hereby declared that the joint tenancy between the 1st Defendant/Ancillary Defendant and the deceased, Damian Michael Coley, was severed.
 - iii. That it is hereby declared that the 1st Defendant/Ancillary Defendant holds the legal estate in Apartment 3R11 Union Estate, Phase 3, Twickenham Park, Spanish Town, in the parish of Saint

Catherine, being the land comprised in Certificate of Title registered at Volume 1471 Folio 709 of the Register Book of Titles, on trust for the benefit of herself, the Estate of Damian Michael Coley, and the Claimant.

- iv. That an Order is granted for specific performance of the Agreement for Mortgage Contribution (Agreement for Sale).
- v. That an Order is granted that the Claimant is allowed to complete the Agreement for Mortgage Contribution (Agreement for Sale), to purchase the 1st Defendant/Ancillary Defendant's half interest in the property, being the land comprised in Certificate of Title registered at Volume 1471 Folio 709 of the Register Book of Titles, within one hundred and twenty (120) days of the date of the Orders made herein.
- vi. That an Order is granted that if the Claimant fails to complete the Agreement for Mortgage Contribution (Agreement for Sale), to purchase the 1st Defendant/Ancillary Defendant's half interest in the property, being the land comprised in Certificate of Title registered at Volume 1409 Folio 709 of the Register Book of Titles, within one hundred and twenty (120) days of the date of the Orders herein, then the 1st Defendant/Ancillary Defendant is allowed to purchase the 2nd Defendant/Ancillary Claimant's half interest in the said property within one hundred and twenty (120) days.
- vii. That an Order is granted that the 1st Defendant/Ancillary Defendant is to bear the stamp duty (if any), registration fee, outstanding mortgage, transfer tax, cost of preparing the Agreement for Sale and all usual and all reasonable charges and fees associated with the sale of the 1st Defendant/Ancillary Defendant's half interest in

the property being the land comprised in Certificate of Title registered at Volume 1409 Folio 709 of the Register Book of Titles.

- viii. That an Order is granted that the Registrar of the Supreme Court is empowered to sign any and all documents to effect any of the Court's orders herein in the event that the 1st Defendant/Ancillary Claimant fails or refuses to do so within five (5) days of being requested to do so.
- ix. No Order is made in respect of Damages for breach of contract.
- x. No Order is made in respect of interest.
- xi. The Costs of the Ancillary Claim as well as the Notice of Application for Court Orders, each filed on 17 June 2024 and 11 October 2024, respectively, are awarded to the 2nd Defendant/Ancillary Claimant against the 1st Defendant/Ancillary Defendant and are to be taxed if not sooner agreed.
- xii. The Notice of Application for Court Orders, which was filed on 12 September 2024, is withdrawn.
- xiii. Messrs. Goffe Law are to prepare, file and serve these Orders.

[47] With respect to the Claimant's Notice of Application for Summary Judgment/Striking Out, which was filed on 23 October 2024, the Court makes the following orders: -

- i. Summary Judgment is granted in favour of the Claimant against the 1st Defendant, Zadia-Kay Smith, on the Claim and Counterclaim.
- ii. The Costs of the Claim, which was filed on 20 February 2024, as well as the Costs of the Notice of Application for Summary Judgment/Striking Out, which was filed on 23 October 2024, are

awarded to the Claimant against the 1st Defendant and are to be taxed if not sooner agreed.

- iii. The Amended Notice of Application for Injunctive Relief, which was filed on 2 September 2024, is withdrawn.
- iv. Mesdames Yualande Christopher & Associates are to prepare, file and serve these Orders.