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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

SUIT NO. 2004 HCV 00561

BETWEEN	**ERROL YORK ST. AUBYN MORRISON**	**CLAIMANT**
AND	**MARY SALOME MORRISON**	**DEFENDANT**

Donald Sharschmidt Q.C and Hugh Levy instructed by Hugh Levy & Co for Claimant.

Carol Davis for Defendant

HEARD: January 31st, February 1st and April 21st 2006

JONES, J.

[1] Quod erat demonstrandum. The rhetorical flourish of this Latin epigram meaning literally, "which was to be demonstrated", has for centuries signified that the requirements for mathematical proof were at an end. To prove something has always meant persuading one's peers, or in legal cases a judge or jury, that it has indeed been shown - no more, and no less. In a court of law, the burden of proof falls on the person making the claim, and in a civil case, the required standard of persuasion is on a balance of probabilities. That is the evidentiary burden that faces Mary Salome Morrison on her counterclaim in this case, to prove on balance, that it has indeed been shown that Professor Errol York St. Aubyn Morrison and herself agreed that she would have a beneficial interest in certain properties acquired in his name solely or, alternatively, that it can be inferred that she acquired a beneficial interest under a constructive trust.

[2] Professor Errol York St Aubyn Morrison and Mary Salome Morrison met as university students at the University of Malta in 1967 and were later married in 1970 in England. They returned to live in Jamaica in 1971 and are the parents of four daughters. From the evidence, he was a father and husband of earnest strenuousness, she an upper middle class Maltese housewife, and part-time French teacher. They lived a privileged life in an affluent Kingston household with their four children. At the heart of their marriage was a symbiotic relationship – the essence of distance and intimacy. As the years went by, both watched the bloom fade from the marriage, and in the end, their dreams splinter like a shattered mirror. The marriage having come to an end in November 2001, Professor Morrison brought an action in this court asking for a declaration that:

a) He and Mary Salome Morrison are both equally beneficially entitled as joint tenants to property at 6 Montclair Drive, Kingston 6 in the parish of St. Andrew, (the matrimonial home) comprised in Certificate of Title registered at Volume 926 Folio 152 of the Register Book of Titles. (This is despite the fact that he is the sole legal owner and says that he paid all the moneys required to complete the sale without any contribution from Mary Salome Morrison)

b) There be partition of the property by way of sale and that Mary Salome Morrison should have the first option to purchase his half share in the property at the current market value.

[3] Mary Salome Morrison in her counterclaim agreed that both their interest in the property at 6 Montclair Drive, Kingston 6 in the parish of St. Andrew be declared to be 50% for each. However, she claimed to be entitled to fifty per cent interest in the following properties:

a) 4 Montclair Drive in the parish of St. Andrew (which is in the sole name of Dr. Errol Morrison) together with rents from that property.

b) The thirty acre farm part of Green Hill in the parish of Portland owned by EMO Farms.

c) Property at 5853 SW 144 Circle Place, Miami Florida, 33183, U.S.A.

d) A time share at C10 and C11 Negril Interval Ownership Club,

e) Various bank accounts in USA, England and Jamaica.

f) The shares in the Diabetes Centre Limited and the building at 1 Downer Avenue owned by the Diabetes Centre Limited

[4] Professor Errol Morrison agreed that Mary Salome Morrison is entitled to a fifty per cent interest in:

a) The property at 5853 SW 144 Circle Place, Miami Florida, 33183, U.S.A.

b) The 30 acre farm registered in the name of EMO Limited (this was sold).

c) The time share in C 10 and C 11 at the Negril Interval Ownership Club.

[5] He disputed, however, that he had any agreement or understanding with Mary Salome Morrison for her to acquire any interest in relation to:

a) The shares in the Diabetes Centre Limited and the building at 1 Downer Avenue owned by The Diabetes Centre Limited;

b) The property at 4 Montclair Drive in the parish of St.Andrew (which is in the sole name of Dr. Errol Morrison) together with rents from that property.

c) The six acre and the three acre lots of land (these were not part of the counterclaim).

[6] These four properties are at the heart of the dispute in this case. Three issues arise in relation to these properties:

a) Was there an agreement between the parties that Mary Salome Morrison was to acquire a beneficial interest in the three properties purchased in the name of Professor Morrison solely and in the other in the name of the Diabetes Centre, and if so, did they agree in what proportion the assets were to be held by each?

b) If there was no such agreement, was there a common intention at the time of the acquisition that Mary Salome Morrison was to enjoy a beneficial interest in the properties?

c) If so, did Mary Salome Morrison rely on that common intention to her detriment?

The first issue: was there an agreement between the parties that Mary Salome Morrison was to acquire a beneficial interest in the three properties purchased in the name of Professor Morrison solely and in the other in the name of the Diabetes Centre, and if so, did they agree in what proportion the assets were to be held by each?

[7] It is a pity that Miss Davis in her submissions on behalf of Mary Salome Morrison felt the need to exaggerate the issue of "matrimonial assets," which is a euphemism for "family assets." You will recall that all the judges in **Pettitt v Pettitt**[1] made it clear that English law (and if I may say so, Ja-

[1] [1970 A.C 777

maican law) has no doctrine of "family assets." Lord Upjohn summed up the views of the court on this issue in the following statement:[2]

> "My Lords, we have in this country no doctrine of community of goods between spouses...in my opinion the expression "family assets" is devoid of legal meaning and its use can define no legal rights or obligations...If there is to be a change that must be done by Parliament."

[8] Returning to the first issue, the House of Lords decision in **Lloyds Bank v Rosset** is in modern times a convenient starting point. Lord Bridge in that case set out the proper approach in dealing with matrimonial disputes about property. He said:[3]

> "The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.
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> In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust."

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[2] Already cited at page 817
[3] [1991] 1 A.C 107 at page 132

[9] Lord Bridge set out two broad categories. First, where there has been discussion between the parties at the time of the purchase and it can reasonably be inferred that they intended the person who is not the legal owner to have a beneficial interest. Second, where there is no evidence of any discussion or agreement regarding their respective interest, but the common intention between the parties can be inferred from their behaviour at the time when the property was acquired.

[10] In assessing the intention of the parties, the relevant intention is what was reasonably understood by the other party. Mary Salome Morrison contends that there were discussions between her husband and herself and an agreement and understanding that all property acquired in the course of the marriage would be held jointly by them in equal shares. She claims that these assurances were confirmed in letters written to her in 1983.

[11] This is how she puts it in her affidavit evidence:

> "Throughout our marriage the Claimant and I operated a common fund and/or held joint accounts and/or jointly purchased out of our joint resources a number of properties as set out above...Right from the beginning we agreed that we would do everything together, and that we would pool our resources to establish ourselves and promote the family that we were planning to have. Throughout our marriage, we lived on the basis that everything we had belonged to both of us. The Claimant repeatedly told me not to worry about anything, because all the assets we acquired over the years belonged to both of us. I relied on the assurances given to me by the Claimant. I worked on our various family projects. I gave my salary to the Defendant to be put into our joint account and devoted my entire life to the Claimant and our children based on the understanding that we were doing everything together for the advancement of ourselves and our children".

[12] She asserts that Professor Morrison and her had discussions about joint ownership and that they agreed that all assets acquired would belong to both of them jointly. In fact, most of the properties acquired by Professor Morrison and herself were jointly owned. In relation to the disputed

properties which were acquired in Professor Morrison's name solely or in the name of the Diabetes Centre, she contended that these were all matrimonial assets.

[13] The truth is that the evidence of Mary Salome Morrison was not very convincing; many aspects of her evidence seemed contrived with the aim of achieving a desired result. Here are some examples. Firstly, in paragraph 10 of her affidavit filed on November 12, 2004, she says, "throughout our marriage I was working. I worked as a teacher at Immaculate and then at Campion High School." Under cross-examination, she continued in the same vein "I taught at Alpha for three or four years and I went to Immaculate for about ten years. I then taught at Campion." However, she later says in that same paragraph 11 of her affidavit "Whenever I was employed..." suggesting that there were times she did not work. Further, and presumably - while she was employed as a teacher - she alleges in paragraph 11 of her affidavit that she worked for several years in the medical practice of Professor Morrison as "nurse, receptionist, bookkeeper, driver –everything!" She also says that she never received a salary because as his wife she was working together in their joint interest. She says that the Buff Bay practice went on for fourteen years and even after someone else was found to run the office, she still continued to work whenever the need arose. This evidence clearly contradicts her evidence of working throughout the marriage as a teacher.

[14] All this is made even more incredible by two claims by Mary Salome Morrison. Firstly, she said that when Professor Morrison established his office at Medical Associates which went on for about ten years she also helped in that practice "on many occasions as the need arose." She claimed that she was not paid a salary for this as she was working for their joint advancement. Secondly, she claimed that when the farm was bought by EMO Limited, she spent from 1982 to 1988 working

and managing the farm. In between these activities she says that she was able to transport the children to and from school and their various other extra curricular activities.

[15] On the other hand, Professor Morrison stoutly denies that any discussions took place with Mary Salome Morrison for the purchase of 4 Montclair Drive or 1 Downer Avenue, which was owned at one time by the Diabetes Association and then later by the Diabetes Centre. In relation to 4 Montclair Drive, he says that this was bought from his own resources in 1984 for $305,000.00 and was financed independently of 6 Montclair Drive. His unchallenged evidence is that he financed the purchase of 4 Montclair Drive in the following manner:

a) Mortgage from West Indies Trust	$220,000.00
b) Mortgage from National Commercial Bank	$ 50,000.00
c) Cheque from Royal Bank	$ 30,000.00
d) Sale of land at 21 Crayne Crescent	$12,000.00
e) Miscellaneous personal funds	$14,000.00

[16] He said in his evidence that all the refurbishing work done on 4 Montclair Drive was independent of any work that was done on the jointly held matrimonial home at 6 Montclair Drive. He said that the mortgages registered on the title of the matrimonial home at 6 Montclair Drive in 1984 and 1985 was used to obtain financing to develop the farm which was jointly owned. He also said that the mortgages in 1987 and 1989 were used to do improvements on 6 Montclair Drive by enclosing

two patios with grills and roofing, building an outhouse and gardener's living quarters together with the erection of a 3,000 gallon steel tank and pump at the premises.

[17] He said that in 1994 -1995 he constructed a pool at 4 Montclair Drive. This he said was done by one of the university Architects and paid for by means of a consumption loan from the university which he repaid by salary deductions.

[18] In relation to Mary Salome Morrison's account that she was considered to be a landlord of the property at 4 Montclair Drive, Professor Morrison agreed that while he asked her to oversee the rental of the property, he never agreed to give her a beneficial interest. This statement is clearly illustrated by the fact that he terminated the arrangement for her to oversee the property when she quarrelled with the existing tenant.

[19] As far as the property at 1 Downer Avenue was concerned, he said that the Diabetes Association, which had several members including himself, acquired land with a derelict building on a lease sale basis for $100,000.00. The Diabetes Association then proceeded to raise funds for replacing the old building. After some money was raised, a strata plan was effected on the property; the lots sold, and the money raised in the sale of the strata lots used to assist in the construction of the building on the premises. He said that all additional moneys used to support the construction of the building at Downer Avenue was acquired by loans, his own resources and a loan from the National Development Bank of Jamaica. He said that at no time did he consider the Diabetes Centre to be a family business. He placed his daughters' names as shareholders in the company so that they would have the benefit of his legacy, not for them to be involved in the day to day business itself.

[20] The court accepts Professor Morrison as a credible witness. On the other hand, the evidence given by Mary Salome Morrison in support of her counterclaim that there was an agreement for her to share beneficially in the property at 4 Montclair Drive, Beverly Hills, the six and three acre lots of land (for which Professor Morrison is the sole legal owner) or at the Diabetes Centre located at 1 Downer Avenue (which is a registered company with shareholders of which she is not one) is at its highest, tenuously circumstantial. There is also no evidence that Professor Morrison induced Mary Salome Morrison to believe that she had acquired a beneficial interest in either property.

[21] Accordingly, the court finds on a balance of probabilities that the acquisition of 4 Montclair Drive, Beverly Hills, the six and three acre lots of land and the building comprising the Diabetes Centre located at 1 Downer Avenue, were business ventures entered specifically into by Professor Morrison for his own financial and professional benefit. The court also finds that the letter written by Professor Morrison to Mary Salome Morrison saying, "Whatever I have belongs to you and the children" is, without doubt, a reference to his entire family. At its highest, it is an equivocal statement and does not and cannot be relied on as being the factual basis for any agreement or imputation of an agreement that would alter established proprietary rights in properties bought in his name alone. So then, in the absence of any agreement to share the beneficial interest in the properties we must now examine the second issue.

The second issue: was there a common intention at the time of the acquisition that Mary Salome Morrison was to enjoy a beneficial interest in the properties?

[22] The issue of determining the common intention of the parties in relation to the beneficial interest in property acquired in one name only was explored by Lord Diplock in **Gissing v. Gissing**. He said[4]:

> "...the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party. On the other hand, he is not bound by any inference which the other party draws as to his intention unless that inference is one which can reasonably be drawn from his words or conduct... In drawing such an inference, what spouses said and did which led up to the acquisition of a matrimonial home and what they said and did while the acquisition was being carried through is on a different footing from what they said and did after the acquisition was completed. Unless it is alleged that there was some subsequent fresh agreement, acted on by the parties, to vary the original beneficial interests created when the matrimonial home was acquired, what they said and did after the acquisition was completed is relevant if it is explicable only on the basis of their having manifested to one another at the time of the acquisition some particular common intention as to how the beneficial interests should be held..."

[23] In our own jurisdiction this principle has been applied in **Gasson Elias Azan vs. Dawn Genevieve Azan** where Forte J.A said[5]:

> "In determining whether there was a common intention to share the beneficial interest an express agreement to that effect would be sufficient. However, where, as in most cases, there is no such agreement, the common intention of the parties may be inferred from their words or conduct."

[24] In **Springette v Defoe**[6] it was held that a common intention of parties in relation to the beneficial interests in a property must mean a shared intention communicated between them; it cannot

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[4] [1971] A.C 906
[5] SCCA 53/87 at page 3-4
[6] [1992] 2 F.L.R. 388

mean an intention which each happened to have in his or her own mind but had never communicated to the other.

[25] In this case, Mary Salome Morrison was not put on the title as a joint owner of the property at 4 Montclair Drive, Kingston 6, or on the six and three acre lots. In addition, there was no evidence that she made any contribution to the purchase price or mortgage payments for any of those properties. This position was the same for the property at 1 Downer Avenue, which I have said before, was a business venture involving, at first, the Diabetes Association and later the Diabetes Centre. From the evidence, she was not a part of the ownership of the Diabetes Centre. Out of a total of two hundred issued shares in that company, one hundred eighty shares were for Professor Morrison and the other twenty shares split amongst his four daughters in equal shares.

[26] Mary Salome Morrison conceded that her salary as a teacher was much less than the money which Professor Morrison was able to earn as a medical practitioner. She said that her salary was deposited in their joint accounts at NCB, and at Scotia Jamaica Building Society and used to meet family expenses. In her own words, this is how she put it:

> "My earning was not as great as his. I would not describe it as insignificant. I came to Jamaica in 1971. My first job was at Alpha. I was working in the office as I was having difficulty understanding how people spoke. Later I taught French there. I started in 1972. I was not well paid but paid. I would agree that he earned substantially more than me."

[27] The claim that her salary was used to meet family expenses was denied by Professor Morrison. He said that her salary was unable to make any significant input in the family budget. I find it significant that Mary Salome Morrison gave no evidence suggesting that the contribution of her salary to the joint account enabled Professor Morrison to afford to make either cash contributions

or mortgage payments for the investment property at 4 Montclair Drive, the six and three acre lots, or the property at 1 Downer Avenue.

[28] The question that arises here is what types of contribution by the party not on the legal title would give rise to an inference that there was a common intention that that party should acquire a beneficial interest? The following passage taken from the judgment of Lord Diplock in **Gissing v Gissing** puts the matter beyond doubt[7]:

> "Where the wife has made no initial contribution to the cash deposit and legal charges and no direct contribution to the mortgage instalments nor any adjustment to her contribution to other expenses of the household which it can be inferred was referable to the acquisition of the house, there is in the absence of evidence of an express agreement between the parties, no material to justify the court in inferring that it was the common intention of the parties that she should have any beneficial interest in a matrimonial home conveyed into the sole name of the husband, merely because she continued to contribute out of her own earnings or private income to other expenses of the household. For such conduct is no less consistent with a common intention to share the day-to-day expenses of the household, while each spouse retains a separate interest in capital assets acquired with their own moneys or obtained by inheritance or gift. There is nothing here to rebut the prima facie inference that a purchaser of land who pays the purchase price and takes a conveyance and grants a mortgage in his own name intends to acquire the sole beneficial interest as well as the legal estate."

[29] From all the evidence, in this case, it is clear that Mary Salome Morrison and Professor Morrison acquired two matrimonial homes in the course of their marriage. Firstly, the home at Crayne Way, which they acquired at the beginning of the marriage and then later the home at 6 Montclair Drive, Beverly Hills. Mary Salome Morrison has argued that as it was common for them to acquire some properties jointly, this ought to lead to an inference that there was an agreement or at least a common intention for her to acquire a beneficial interest in properties at 4 Montclair Drive, Beverly

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[7] [1971] A.C 909

Hills, the six and three acre lot of land and an interest in the building owned by the Diabetes Centre at 1 Downer Avenue. However, in **Hammond v Mitchell**[8] it was held that the fact that there is a common intention to share in the beneficial interest in relation to one property does not automatically justify an inference of intended proprietary interest in other properties. That argument, therefore, cannot succeed. As there is no issue of a beneficial interest in the four properties claimed (in the name of Professor Morrison solely) or in the shares of the Diabetes Centre (a registered company), which are the subject of dispute in this case, then there can be no question of the quantification of shares.

[30] There are two further points to be resolved. Firstly, Mary Salome Morrison has asked that the moneys in the accounts in the United States of America, England and Jamaica be declared to be fifty percent to each and that Professor Morrison accounts to her for her share of the money in the accounts from the separation in 1996 to the present time. Professor Morrison has responded to this claim with evidence that his daughter Ruth was placed on the Lombard's account to meet her obligations as a student in Scotland, so in effect, that account was no longer jointly between himself and Mary Salome Morrison. He has, however, given no other information regarding the other joint accounts.

[31] In **Jones v Maynard,**[9] the parties operated a joint account in which both parties deposited their income and in which both parties routinely withdrew funds. Although the husband's deposits were greater than the wife's and there was no agreement as to the parties' rights to the account, the

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[8] [1991] 1 WLR 1127
[9] [1951] Ch. 572

court held that the wife was, nevertheless, entitled to half the closing balance of the account. This principle was refined in **National Provincial Bank v. Bishop**[10] where Stamp J. said:

> "now, where a husband and wife open a joint account at a bank on terms that cheques may be drawn on the account by either of them, then, in my judgment, in the absence of facts or circumstances which indicate that the accounts was intended, or was kept, for some specific or limited purpose, each spouse can draw on it not only for the benefit of both spouses but for his or her own benefit. Each spouse, in drawing money out of the account, is to the treated as doing so with the authority of the other, and in my judgment, if one of the spouses purchases a chattel for his own benefit or an investment in his or her own name, that chattel or investment belongs to the person in whose name if is purchased or invested: for in such a case there is, in my judgment, no equity in the other spouse to displace the legal ownership of the one in whose name the investment is purchased."

[32] The decision in **National Provincial Bank** was followed in our jurisdiction in the case of **Azan v Azan**[11].

[33] In this case, where the parties have separated subsequently, it seems to me that Mary Salome Morrison would be entitled to one half percent of any balance standing in credit in the joint accounts at the date of the separation in 1996. There was no evidence in this case indicating that there was a settlement in 1996 of any balance that was credited to any of the joint accounts. On this basis then, it is only just that Professor Errol Morrison should account to Mary Salome Morrison for fifty percent of all sums standing in credit in joint accounts between them in the United States, England and Jamaica (excepting the account at Lombard's which is also in the name of Ruth Morrison) which remained open at the date of separation in 1996. There is evidence, which I accept, that all the documentation for the bank accounts were left at 6 Montclair Drive which is presently occupied by Mary Salome Morrison. Accordingly, this order for an accounting is subject

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[10] [1965] 1 All ER 249 at pg. 225
[11] Already cited

to Mary Salome Morrison providing access to the relevant records. Any amount shown to be due to Mary Salome Morrison shall be paid within ninety days from the presentation of the final accounting.

[34] Professor Morrison agreed that Mary Salome Morrison was entitled to fifty percent of the following properties, which the evidence disclosed were sold:

a) 5853 SW 144 Circle Place, Miami, Florida, 33183, USA

b) One week in time share at C10 and C 11 Negril Interval Ownership Club

c) Thirty acre farm registered in the name of EMO Limited.

[35] The decision to sell the 30 acre farm owned by EMO Limited was on the evidence of Mary Salome Morrison jointly made and, in fact, this property was sold before Professor Morrison left the matrimonial home. On the evidence, the net proceeds were used to pay off joint debts of the parties. There was no evidence given regarding the proceeds of sale and disbursements for the other two properties. Accordingly, there shall be an administrative accounting of the proceeds of sale and disbursements made in respect of:

a) 5853 SW 144 Circle Place, Miami, Florida, 33183, USA

b) One week in time share at C10 and C 11 Negril Interval Ownership Club

[36] This order is also subject to Mary Salome Morrison providing access to the relevant records which were left at 6 Montrose Drive. At the end of the accounting, where any positive balance is shown to have accrued at the conclusion of the sale, this sum should be divided fifty percent for

Mary Salome Morrison and fifty percent for Professor Morrison, and paid by Professor Morrison to Mary Salome Morrison within ninety days of the presentation of the final accounting.

[37] In summary then, there shall be judgment for Professor Errol York St Aubyn Morrison on his claim and judgment to Mary Salome Morrison on paragraphs 4, 6, and 7 of her counterclaim. In relation to paragraph 8 of the counterclaim there shall be a judgment for Mary Salome Morrison only to the extent that the accounts listed in paragraph 8 (a) to (h) of the counterclaim are joint accounts between herself and Professor Morrison. There shall be no order as to cost.