IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. 2 OF 2015

BETWEEN:

JULIAN C. HARRISON III **Plaintiff**

AND

GRETCHEN A. ALLEN **Defendant**

Appearances:	Mr. James Kennedy of Samson & McGrath for the Plaintiff Ms. Sheridan Brooks of Brooks & Brooks for the Defendant
Before:	Hon. Justice Richard Williams
Heard:	7-8 December 2016
Additional written submissions	20 and 21 December 2016
Draft Judgment circulated:	12 June 2017
Date of Judgment:	21 June 2017

JUDGMENT

Introduction

1. Two persons in an intimate relationship often acquire real property for communal and/or familial and/or investment purposes. The property may be put in one person's name only or, as in the matter before me, in the names of both persons. One person may have contributed more or, as in the case before me, all of the

purchase price of the property, or it may be that both contributed equally. Alternatively, the parties may have had discussions about how much of a stake each of them should have in the property. Suppose that some (or many) years later, the relationship breaks down and the parties then disagree over who is entitled to beneficial ownership of the property. Suppose further that the legal owner(s) of the property never executed a declaration of trust in relation to the property. What then is the legal position? If the parties are not married, then the dispute over the beneficial ownership of the property is simply determined by the usual applicable common law principles.[1]

2. This case involves a dispute over the beneficial ownership of a property known as West Bay Beach South, Block 13B, Parcel 142H70 ("the property") which has been used by parties in an intimate relationship, where the legal title is vested in both parties. Although Julian C. Harrison III, the Plaintiff ("P"), claims that the property was purchased by him solely as an investment it was bought with both parties named as joint proprietors on 30 December 2006 for US$299,000. P provided the capital outlay for the costs of purchase[2] which totalled US$314,000[3].

[1] V.K.Rajah JA, Singapore Court of Appeal at paras 1-4 ***Chan Yuen Lan v See Fong Mun*** [2014] SGCA 36.
[2] Except for $195 closing costs paid by D.

Procedural Background and the Parties' Claims

3. The proceedings were commenced by Writ of Summons and Statement of Claim filed by P on 8 January 2016. P therein claims that the entire proceeds from the sale of the property amounting to US$194,868.32 are held on a resulting or constructive trust for his sole benefit. In the Writ he seeks (i) a declaration that the afore-mentioned net proceeds of sale are held on trust for him; (ii) an order transferring those funds to him; and (iii) an account, if necessary, of all sums paid by the parties to the agreement in relation to the property[4]. P also claims, at paragraph 19 in the Statement of Claim, breach of agreement due to Gretchen Allen, the Defendant ("D"), allegedly failing to pay the strata fees and other monthly expenses associated with living in the property during the period that she occupied the same between 2011 and May 2014. At paragraph 20 of his Statement of Claim P, referring only to sums set out in paragraphs 14.2 to 14.4 in the Statement of Claim, claims damages for breach of the agreement amounting to US$58,931.68.[5] Those sums are at paragraph 14.2 Strata Fees of US$34,824.77, at paragraph 14.3 interest on Strata Fees of US$12,085.92 and at paragraph 14.4 legal fees in Cause No. 13/2014 of US$11,847.42. These sums added together give a total of US$58,758.11, so it appears that P has inadvertently added the $173.57 utility figure found at paragraph 14.5 in the Statement of Claim when reaching the figure of US$58,931.68.

[4] At paragraph 42 in his closing written submissions it is submitted that an account is not necessary.

4. At the hearing P accepted that D had a legal and beneficial interest in the property, but only on the basis that she would be responsible for the day to day expenses relating to the property and that her beneficial interest was limited to 50% of the amount of any capital appreciation in the property following deductions for his expenditure including the purchase costs and the loan repayments and debt. At paragraph 4.5 in his Statement of Claim attached to the Writ of Summons P stated that upon sale D would be entitled to a half share in any net profit. It is therefore not accurate for D to contend in her closing written submission that P did not admit in the Writ that D had an equitable interest in the property at all.

5. P stated that the "*specific exit plan*" as to what would happen if their relationship broke down had not been discussed. P accepted during cross-examination that *"prior to the sale of the property I not recall if I discuss that not only profit – she knew what sell for and that is less than what we pay for. It was a hand shake."*

6. D in her Amended Defence and Counterclaim[6] claims that the property was not purchased as an investment for P, but was purchased for her as a permanent place to reside on the condition that P would stay with her there when he was in the Cayman Islands. D highlights that the parties, as reflected by the 21 February 2006 entry on Register at the Land Registry, purchased the property as joint

[6] Unopposed leave was given by the Court to D to file the Amended Defence and Counterclaim on 7 December 2016.

proprietors.[7] D avers that the parties had an oral agreement whereby if the property was sold they would each be entitled to half of the proceeds of sale and she would not, as contended by P, only be entitled to a half share in the net profit. In re-examination she said "*the first time suggest to me that I only get half profit is when legal proceedings started - that was after I signed the transfer documents.*" D seeks half of the proceeds of sale "*on the basis that a constructive trust arose*" in her favour as that is consistent with the parties' intention and as a "*result of her acting to her detriment by her significant assistance with the acquisition of the property, her paying the various outgoings of the property, including but not limited to strata fees and utilities, her overseeing the renovations ... all for no remuneration to herself*" and as she had "*paid approximately CI$2,000 per month on strata and other expenses related to the property, whilst she was employed.*"

7. D denies that P has suffered any loss, as she has not breached any agreement with P concerning the property and that there was no agreement that she would pay the strata and other monthly expenses associated with the property in lieu of rent. D pleads at paragraph 36 of her Amended Defence that the parties had a "*joint obligation*" to pay the strata fees and other expenses relating to the property arising out of their joint ownership of the same.

[7] See confirmation of this at paragraph 18 of D's Skeleton Argument dated 5 December 2016.

8. Rather surprisingly, having regard to the significant benefit and enjoyment D almost exclusively derived from her occupation of the property, she counterclaims[8] for damages for unquantified losses to be assessed incurred by her for her "*time expended in sourcing the property, sourcing a financial institution to financing and overseeing the renovations for the kitchen upgrade, the purchase and installation of the appliances.* D, further or in the alternative, claims damages for loss arising out of her payments for *"the strata and associated expenses of the property during joint ownership and joint occupation of the property of $2000 per month.*" P, in his Defence to Counterclaim[9] filed on 10 March 2015, denies that (i) any agreement for him to pay strata payments and other expenses existed; (ii) D acted to her detriment; and (iii) D suffered any loss.[10] I am satisfied that there is no merit in D's claim at paragraphs 55 and 56 of her Amended Counterclaim due to no loss being suffered or compelling proof of her acting to her detriment.

9. In the Amended Defence and Counterclaim D seeks a declaration that half of the net proceeds of sale (US$97,434.16) is held on trust for her and an order that those funds be distributed to her. D claims pre and post interest on any award for damages made by the Court. P in his Defence to the Counterclaim also denies that the parties agreed that each would be entitled to half of the net proceeds of sale to

[8] Paragraph 50 Amended Defence and Counterclaim.
[9] This is the Defence to the Counterclaim and not to the Amended Defence and Counterclaim as the application for leave to amend the Counterclaim was only made and granted at the outset of the hearing. P confirmed that his Defence to the Amended Counterclaim basically remains the same as to the Counterclaim.
[10] Paragraph 51 P's Defence to Counterclaim.

the extent that such agreement excluded the costs associated with purchase to the property including the funds borrowed to purchase the property.[11] P denied that half of the proceeds of sale are held on constructive trust for D.[12]

Factual Background

10. P, a seventy-four year old Vermont Certified Accountant living in the USA, first met D, then aged fifty-nine, in June 2004 when he was in the Cayman Islands on business. He has for approximately fifteen years attended to the interests of a client in Grand Cayman every June. Although P was married,[13] the parties soon formed an intimate relationship and they met up in Florida on D's birthday in July 2004. The parties kept in touch with each other by email exchanges. D says that they next met in Florida in November 2004, something which is not accepted by P and is something that was not put to him in cross-examination. They met in June 2005 coinciding with P's annual four-day June business visit to the Cayman Islands. P contends, and D accepted in her evidence that it is plausible, that over a nine-year period he visited and stayed at the property for a total of fifty-five days and that he and D met up on those occasions, but they also did so more often than that in the USA.

[11] Paragraph 11 P's Defence to Counterclaim.
[12] Paragraph 23 P's Defence to Counterclaim.
[13] P and his wife divorced in January 2014.

11. As a consequence of Hurricane Ivan striking the Cayman Islands in September 2004 D had no permanent home. D contends that P suggested to her that she find a condominium for him to purchase for her as he "*wanted*" her "*to have a home.*" In re–examination she said "*Buying condo was adventure for us both to share. Intention was for us to have a place to be together – for me to have a home. There was conversation about him paying the loan and that we would share the property. That (it) ours jointly, both have full use of it as we liked.*" P states that he told D to source a property after she had informed him that the Cayman Islands was a good place to invest in property and that she would be able to locate a suitable one for him.

12. P contends that the agreement was that D would explore available properties and then make suggestions as to the best opportunity. If a suitable property was found, although he would fully fund the purchase, it would be placed in their joint names and he would stay there when he visited the Cayman Islands. P stated that it was agreed that D would reside in the property rent free, but she would be responsible for paying the strata fees and other monthly outgoings including the utility bills. P said that D made the offer to pay the strata fees because, as he had paid for the property, she could then be regarded as being a "*ready-made tenant.*" D conceded in cross-examination that she "*agreed that I (D) would be responsible for strata fees.*" When put to him during cross -examination, P did not agree that D's offer to pay the strata fees was conditional upon her being in employment. He said he

told her, when they later met in Bermuda, that he was not prepared to finance the property and that D should get a job or a roommate. In an email to D dated 8 September 2008 P said that "*when we bought this you were to cover the operating costs.*" In the same email he added that he "*did not expect to have to subsidise the operating expenses, unless absolutely necessary*" and advised that she needed to prioritise her expenditure in order to afford to live in the property and that the payment to the strata "*should be first on your priorities.*" During cross-examination P said that by this statement he did not mean that D need not pay if she said she could not afford it, but it meant that if she wanted to live there then she had a responsibility to obtain suitable employment to enable her to pay the expenses incurred by living there. P accepted during cross-examination that, in reality, if D failed to pay the property expenses despite the fact she was also technically liable to do so as an owner, he would in the end be liable to clear the debts as he owned the unit. D stated in cross-examination, when it was put to her that she did not mention anything in the disclosed emails between the parties that the agreement for her to pay the strata fees was conditional upon her working, that she did not know how "*any right thinking person*" could think that her agreement to pay the strata fees was not conditional upon her being in employment.

13. During cross-examination P said that "*from the outset it was a partnership relationship, one put up the money and the other managed (the property).*" When I consider the payment arrangement for the strata fees I find that the parties'

intention was that D, being the one having the benefit of living at the property, would be primarily responsible for meeting this day to day occupation expense. This is clear from the emails between them before and after completion. However, I am not satisfied that it was intended to be a rigid contractual arrangement and, although P may not have been enamoured when having to do so, it is evident that over a number of years during their intimate relationship he was willing to step in to meet that expense if D failed to or was unable to do so. It is a rather unattractive submission made by D that, although P had made payments to the strata over the years, even after he had made clear to D that the expectation had been for her to make these payments and that she should find a job and/or a tenant to meet them, he should be criticised and shoulder all of the responsibility for the non-payment of the strata fees from when she told him that she was unemployed in or around April 2011 until the property was sold.

14. Due to the flexible approach taken to the strata payments which the parties actually adopted during their fairly lengthy intimate relationship I do not find that any non-payment by D grounds a separate claim for damages made by P for the strata related expenses. I am not satisfied that the parties intended that, if D failed to make strata payments, P would deduct all strata payments periodically made by him over the years from the proceeds of sale to reach a net proceeds figure or be entitled to make a claim for the same in an action for damages. However, to her credit, it is evident from the proceeds of sale figure D uses at paragraph 53 of her

Amended Defence and Counterclaim that she agrees that the outstanding expenses listed in paragraph 14.2 to 14.4 in the Statement of Claim[14] as well as the outstanding $173.57 utility expense at paragraph 14.5 should be deducted from the sale price to arrive at the a 50% net proceeds of sale figure of US$97,434.16. I agree that if, at the time of the sale of the property, arrears remained on the strata account[15] then that should be regarded as a property related debt which should be paid from the proceeds of sale.

15. D said in cross-examination that she viewed about "... *half a dozen properties. Between half a dozen and a dozen in max that I recall. Each visit was half an hour to forty-five minutes."* This, coupled with supervising some renovations and repair work on the property, could hardly be regarded as being onerous. When placed in the context of the considerable and almost exclusive occupational benefits that D has enjoyed from the many years residing in the property, it does not support a submission by D that by so doing she acted to her detriment and that damages are thereby recoverable.[16] D has always accepted that she never had sufficient funds to buy her own property, so she cannot contend that by relying on their agreement that she could reside at the property she acted to her detriment because she did not go out and purchase another home for herself.

[14] Including interest on strata fees, legal fees in the strata case.
[15] Including interest on strata fees, legal fees in the strata case.
[16] See reference in paragraph 8 herein.

16. P accepts that D conducted a search for and viewed various properties. For example in an email dated 26 October 2005 from D to P she provided him with details of a property which she felt was suitable. In that email she stated that she had "*found an excellent* investment property *for you.*" D told him that one of the bedrooms could be rented out so "*you'd have immediate tenants.*" She said that she thought that the property was "*exactly what you are looking for*" and that due to its location "*your risk is greatly limited as opposed to anything coastal.*" In answer to my question D claimed that she kept using the word "*you*" when referring to the property because P was the purchaser and she was in "*no position to shop for a condo.*" The language in the email exchange is consistent with the purchase in both parties' minds being, at least partly, long term investment driven. D accepted in cross-examination that the word investment used by her in the emails did not "*come out of nowhere, I think generally regarded that any purchase in Cayman Islands real estate is considered an investment...*" D told that Court during cross-examination that although she used the word investment in her email that she "*did not consider that to be the driving force behind the purchase.*" When it was put to D during cross-examination that the purchase of the property was clearly an investment she replied that "*was arguable.*" D also commented in cross-examination that she did "*not especially agree with Mr. Harrison when he says it (the property) was brought as an investment.*"

17. D highlights an entry on the photocopy of the 8 November 2005 page from her diary in which she records in relation to an earlier property that she had sourced that "*Julian wants to put condo in my name.*" On 9 November 2005 in an email exchange between the parties about hotel accommodation for P's next visit he stated "*will be nice in the future when you (we) have your own place.*" Although there may be some force in D's reliance upon these to statements to support her contention that P had intended for her to have a property as a place for her to live, I do not accept her submission that they support a contention that the intention was for it to become her permanent home. D says that P's intention was for the property to be in her sole name, if he did, such a sentiment and the above statements in this paragraph were made before P had properly explored financing options[17] and seemingly before P and D obtained legal advice.[18]

18. Eventually P settled upon the property which is the subject matter of this dispute and an offer to purchase for $299,000 was made, and it was accepted. D had found that property and she had applied for the official search of the property in December 2005. The Offer to Purchase dated 5 December 2005 was signed by D and recorded her as being purchaser.

19. P said that he communicated with a Mr. Winston Ramessar at Fidelity Cayman ("Fidelity") in relation to the financing of the purchase. In his email sent on 14

[17] See paragraph 20-22 below.
[18] See paragraph 24 below.

December 2005. P told Mr. Ramessar in his email sent, and copied into D, on 14 December 2005 that "*This will be Gretchen Allen's residence.... Since she does not have the financial resources to buy the condo I have agreed to sign for the loan and give her whatever help is necessary to cover payments. As this is her residence will it qualify for higher than 70%?*" Importantly he then went on to say in an email sent later in the day to Mr. Ramesser "*Gretchen is a long-time friend. Since she has done all the "leg work" of identifying the property, locating you etc etc she will share in whatever profits that there are, when and if the property is sold.*" The statement in the latter email is consistent with P's case that D would reside in the property and that she would have a share of any profit which would come from any appreciation in its value if/when the property was sold. This would have had greater force if this had been said and accepted by D at that time during an exchange between P and D rather than in an exchange only between P and a potential lender. I note that the statement in the earlier email also makes it clear that the intention was for the property to be D's residence, leading to an inference that it was not purely to be regarded as an investment property purchased for solely commercial purposes with no domestic purpose.

20. D accepted that the emails were copied in to her, but added that she did not at the time correct what P was saying in the above emails as she did not know Mr. Ramesser and because she "*stayed out of it*" as she was "*not directly involved in the financing.*" D added that she did not "*think much one way or the other about*

what he (P) said" and that as far as she was concerned "*it was just an email in passing."* I accept her explanation, in the circumstances that then prevailed, for not involving herself in an exchange about the contents of those emails at the time. The above exchanges may give some support as to what P intended at the time, but they do not alone amount to clear evidence of an express agreement between P and D about the shares in the property.

21. P did not proceed with any borrowing from Fidelity and instead used Chittenden Trust Company d/b/a/ Chittenden Bank ("Chittenden") based in the USA with whom he had an established relationship. As evidenced by the approval letter from Chittenden dated 22 December 2005, P borrowed the sum of US$250,000 with an initial interest rate of 7.5%. The Chittenden loan ("the loan") was not secured on the property. P refers to that letter in support of his contention that it was an investment property as under the heading "*Purpose*" the letter states "*to purchase investment property."* This evidence would have had greater force if D had been asked at the time to confirm that the contents reflected both parties' intention and P accepts that D was not involved in the taking out of the loan process and had little knowledge about the terms of the loan.

22. The term of the loan was 12 months. This is evidenced by the promissory note made by P to Chittenden dated 23 December 2005. Although Chittenden was entitled to seek full payment every December at the end of the 12 month period,

for about 10 years, the balance of the loan outstanding would be rolled over as P could not afford to pay it off and for tax reasons.[19] P did not accept D's suggestion in cross-examination that the loan was renewed because he had an agenda about the property because he knew from 2008, and even more so in 2011, that she was unable to pay the outgoings on the property. On the balance of probabilities I am satisfied that the loan repayments were put in place by P and the repayment period extended not for later tactical reasons suggested by D, but as sensible budgeting of his finances from the outset. When the property was sold in August 2014 the balance on the loan was $90,000, by 19 June 2015 that balance had reduced to $70,000 and P informed the Court that it has since further reduced to $20,000.

23. Upon payment of the purchase payments by P the parties closed on the property on 30 December 2005. Upon completion the property was transferred to both P and D. There is a Transfer of Land Form dated 22 December 2005, which they both signed. In that form P and D declared that they held the property as co-proprietors. However in an undated Transfer of Land Form the parties indicated that they held the property as joint proprietors. It was this undated Transfer of Land Form which was registered on 21 February 2006. Neither party were able to conclusively explain why there was a difference in the detail in the two forms. What is clear is that it is the joint ownership Transfer Form which has been

[19] Evidence of the renewal, payments and balances on that loan be found in the Chittenden statements pages 75 to 188 at tab D2 in the bundle.

certified by the Register. D submits that whether it be joint or co-ownership this supports her contention that P intended to buy the property for her as her home and not as an investment, as he must have realised that he could have been fettered if he later wished to sell the property because he would require her co-operation.

24. D said that they wanted both names on the title to facilitate the required financing. P said he agreed to this as it was an investment property and because he was living a distance away from it that it would make it easier to have D "*on the ground*" and able to sign documents and deal with issues concerning the property as and when they arose. P and D[20] both agree that the final arrangement concerning the title ownership was reached after their consultations with attorney at law Roger Nelson, who D had introduced to P. D said that they were registered as joint proprietors as they had intended that if one predeceased the other, then no one other than themselves should inherit the title to the property. P accepted this and stated in cross-examination: "*I understood that if either of us passed away, whoever predeceased the other, the other would get the property in their sole name.*" This means that although P contends that the property was purchased purely as an investment property, if D was still alive upon his passing, he intended only D and not his estate including his children would benefit from the same. This

[20] See paragraphs 16 -17 D's Skeleton Argument.

approach supports a contention that the facts should be placed in a domestic consumer context rather than an investment context.

25. I am satisfied, taking the evidence as a whole, that, apart from the fact that the parties were involved in an intimate relationship, these above were sensible reasons for the title arrangement in this case, and it reflects the circumstances resulting from these parties primarily living in different countries. This is also consistent with the reason why D was the one who made the Application for Official Search, she was in Cayman at the time and best placed to carry out an act that did not require P's signature.

26. In addition to making the payments for the purchase of the property, P's contention that he paid (i) $2,253.75 in June 2006 to buy appliances; (ii) $5,088.22 in February 2006 for a kitchen upgrade; and (iii) $4,844.19 strata special assessment demanded for a seawall in October 2006 is not challenged. P indicated that although he would ordinarily have asked D to make these payments, he had made them because he was aware that she was not in a position to do so. He accepted that D oversaw this work, including work on a damaged roof which was carried out by the Strata Corporation.

27. The parties opened a joint bank account with Butterfield Bank. This was opened to facilitate property related expenses. P stated that it was a joint account because

D had informed him that it was very difficult for a non-resident to open an account in the Cayman Islands. P stated that between April 2007 and February 2009 he deposited $6,400 into the account. He said that although he had told D that this sum was not for her personal expenditure, she still removed the money. D says they did not share any finances save for what was in the account and that as she had no other account she shared all of her resources with him as he could use it to make deposits and transactions that he had. However, D accepted that P did not use funds in the account for expenses not related to the property although she felt the funds in the account were and remain available to him at his discretion. Despite this account, it is clear that the parties in reality separated their finances, P only using the account for property related expenses.

28. P travelled down to the Cayman Islands, especially every June to coincide with his annual visit to a client in Grand Cayman. P said that when he stayed at the property they did not live as husband and wife, but in a *"significant other relationship."* Although P said it was not a formal arrangement, he would give the $1,000 he usually received from his client for accommodation expenses at the time of the June visit to D to put towards the strata fees or he would pay it directly to the strata. P accepts that he made the payments by cheque of $1,000 on 7 June 2010, 20 June 2011, 13 June 2012, 16 June 2013 and 31 October 2013, but he was not sure what who made the $1,000 cash payment in December 2013. P said he may have made the payment of $2,484.20 made by cheque on 3 January 2010

when he came down for New Year and he initially thought that this amount arose due to an assessment to build a sea wall. He later said he was not sure what the payment in this "*odd amount*" was for. P said that, as he never wired payments save at the time of purchase, he did not make the wire payment of $1,000 made on 27 September 2012, 9 August 2013, 12 February 2013, 1 March 2013 and 24 March 2013 or the $5,000 wire on 24 October 2011.

29. In relation to P's expenditure on the property he produced at the hearing some accounts of accumulated amounts relating to the property. When the accounts were shown to D during cross-examination she stated that they were "*plausible.*" D went on to say that she did "*not have any sort of good head for figures, accountancy*" and added "*Having said that, I have faith in Mr. Harrison's highly paid abilities as an accountant....although I (do) not have meticulous record keeping habits... I am sure that he did.*" I am satisfied on the balance of probabilities that the accounts accurately reflect P making payments totalling $45,182 on the expenses relating to property[21] during the 9 year period of ownership compared to D making payments totalling $99,023[22]. It appears that D depleted her pension funds to enable her to make her payments.

[21] Excluding purchase costs and interest payments on the loan.
[22] Excluding detail about whether some of this amount was met by rent received from tenants who shared the property from to time. D stated in cross-examination that she had a tenant for a part of her first year in the property and that the monthly she charged was "*in the 100's*").

30. The total expenditure amounts to $144,205 and not $154,205 as quoted at paragraph 27 e in P's Closing Skeleton Argument. It is clear that D has benefited from being able to live in and enjoy this 2 bedroom condominium for 9 years during which time she has not had to pay rent at an alternative property. The rent for a property of this nature in the Seven Mile Beach area would be far in excess of the $1,000 per month rent suggested by D.

31. P referred to D's claim that she spent approximately CI$2,000 per month on the property on strata and other expenses and that he intended to gift whole or part of the property to her. P denies that he ever stated that the property was to be regarded as a whole or part gift to D. It is evident that over the period of ownership that some rental income was received and used by D, but there is no accounting of those sums.

32. Unfortunately, as already mentioned, the strata fees fell into arrears due to non-payment by D over a period of time. In December 2006 P, to avoid interest charges, had to pay $11,957.92 to cover outstanding strata expenses. P paid $6,111.13 for the 2017 insurance. P said that he raised with D in 2008 that there were issues with her not meeting the expenses related to the property, especially as she had been "*back to work for a year....*" In an email dated 8 September 2008 after outlining the above expenditure made by him P stated: "*when we bought this you were to cover the operating costs.*" When it was put to D in cross-

examination that, although she had agreed to make the strata payments, she fell behind almost immediately after the purchase, she accepted that P had made payments in 2006 and 2007 towards the strata fees. Despite the above issues, P stated that he felt that the arrangement was working adequately until around 2011 when he thought that she had ceased her employment at the Ritz-Carlton Hotel and at which time he said D ceased making the payments for the strata fees for the property. P accepted during cross-examination that D actually left employment at Cayman Maritime on 14 April 2011 and not at the Ritz-Carlton. P states that he told D that he was not prepared to cover the strata fees and that she should get a job or a tenant to share the expenses.

33. P said that he requested and received the strata statements every quarter. Strata arrears began to accrue and P says that they talked about it when they met in Bermuda in July 2013 when D informed P that she could not afford to make the payments. On 6 September 2013 a demand letter was sent by the Strata Corporation's attorneys seeking immediate payment of arrears which amounted to US$30,232.02. This payment was not made as P felt D was responsible for making the payments under their arrangement and, as a consequence, legal proceedings were issued against the parties in the Grand Court for US$30,651, costs and interest. The Strata Corporation sought an order for sale of the property with vacant possession.

34. P said during cross-examination that D moved out of the property in or around May 2014 and he recognised that the property would need to be sold. The parties were still in a relationship at that time and P stayed with D where she was then living. The relationship appeared to have ended when issues arose between the parties as to what should happen in relation to the proceeds of sale. P said that the parties entered into a Multiple Listing Agreement with a realtor in June 2014 and the property was placed for sale. He said he signed the agreement in June during his annual visit to the Cayman Islands. The agreement has D's name on it. P believed that she had signed it with D at the realtor's office, stressing it was a joint decision made by them to sell the property. P said that he did not set the listing price of $287,500 as he deferred to the selling agent's experience in relation to that.

35. P accepted that D was concerned about the listed price for the property as he believed that she realised that under their arrangement she may receive nothing from the proceeds of sale and he said he had reiterated to her that if the property was foreclosed in legal proceedings they would get nothing. P told the Court that, due to the exchanges he had had with D, he recognised in or around July 2014 that issues had arisen about "*who gets what*" from the proceeds of sale. P said that in July 2014 their relationship came to an end when D informed him that she wanted to receive half of the closing funds from the sale of the property. P said that in making such a demand D had failed to take into account the purchase

payments made by him including the loan payments which, although not secured over the property, meant that there was not an excess at the time of sale but in fact a loss.

36. P accepted that, to secure his investment, he instructed the realtor by a letter dated 6 August 2014 to hold the proceeds of sale in escrow. P deliberately failed to copy D in to that letter. As a consequence, the proceeds of sale have remained in an attorney's trust account. The rather unattractive manner in which P did this, without warning to D who he knew would be signing the transfer on the same day as the said letter without knowledge of this communication and then with himself waiting until 14 August 2014 to sign the transfer and complete the transaction, was rather disrespectful to D with whom he had been in a long term intimate relationship.

37. An offer to purchase in the sum of $270,000 less realtor's commission of $16,200 was received and accepted. At the time of the sale P says the debts related to the property strata were US$58,931.68 and after the closing costs were deducted the net proceeds of sale were US$194,868.32. D claims that she is entitled to half of his sum, a figure of US$97,434.16.[23] P contends that as he spent $314,000 on the acquisition of the property and as the net proceeds amount to $194,541.89, if he were to receive that full amount, he will have incurred, without taking into

[23] Paragraph 53 Amended Defence and Counterclaim.

account the financing charges for the loan, a loss of approximately $120,000. He stated that the finance charges have amounted to US$84,329.95 from the time the loan was taken out in January 2015 and he continues to pay the sum of US$150 per month to repay the interest on the loan. The loan still has a $20,000 balance.

38. I note that D did not accept when put to her in cross-examination that when a loan is taken out to buy a home it should be repaid upon sale stating that it "*depends on the arrangement between loaner and loanee.*" Although P has since the sale of the property reduced the balance outstanding on the loan and despite the fact that the loan was not secured against the property, at the very least the proceeds of sale figure should take into account the debt still outstanding on the loan at the time of the sale plus interest accruing from that date until paid off, which P puts at US$90,000[24], which would give a proceeds of sale figure of below US$104,868.[25]

39. P stated that he felt that he and D had discussed what was outstanding concerning real estate commission, strata fees, interest on strata fees, legal fees and utilities, but he accepted that they never talked about the loan as that was something that he had negotiated in the US.

40. P said that he "*was the money man and she was the brains.*" P viewed them as being partners and as such would equally share in profits, a figure which would be

[24] See Loan Statement from Chittenden (People's United Bank) dated 14 October 2014.
[25] Having regard to need to deduct additional interest since date of sale.

reached after deduction of the costs of purchase. P's case is that there are no profits to share but in fact there are direct and indirect losses arising out of the loss of value of the property, the costs of purchase and sale and D's failure to pay expenses in lieu of rent whilst she was residing at the property. This includes non-payment of strata fees for thirty two months which resulted in legal proceedings and resultant legal fees and interest charges. P seeks payment for those losses and that the sums held at first be transferred to him from the attorneys account.

41. D argues that she is entitled to half of the proceeds of sale, a figure of US$97,434.16. D stated in re-examination that the first time that P suggested to her that she would only get half of the profits was after she signed the transfer documents to sell the property and when the legal proceedings had started. D does not agree that the loan used to purchase the property should be taken into account when assessing the net proceeds of sale.

The Law

42. There is no issue in this case about the legal title of the property, it is vested in both parties' names. As stated by Sir Peter Gibson at paragraph 33 in ***Crossley v Crossley*** [2005] EWCA Civ 1581 "... *in the absence of evidence to the contrary the equitable interests will follow the legal interests.*" A presumption that was reiterated in ***Stack v Dowden*** [2007] 2 AC 432 in domestic circumstances.

43. The first question is whether there was a common intention that D should have any interest at all in the property. As there clearly was such an intention between P and D, the second question is to ascertain the nature of that interest. If there was an express agreement about the shares, that settles the matter. But the evidence of that has to be clear. As Lord Bridge said that page 132 in ***Lloyds Bank plc v Rosset*** [1991] 1 AC 107:

> *"If there is to be a finding of an actual 'agreement, arrangement, or understanding' between the parties it must be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been."*

44. If there was not an express agreement and there is a dispute about the shares, a rebuttal of the presumption that where beneficial interests coincide with the legal estate to give equal shares, the task of the Court is a clinical one. As Lady Hale said at paragraph 60 concerning domestic properties in ***Stack***, it is "*to ascertain the parties' shared intentions, actual, inferred or reputed, with respect to the property in the light of the whole course of conduct in relation to it.*"

45. In ***Stack*** the parties had purchased a property together and it was registered in the Ms. Dowden's sole name. They had four children and they all lived together, both contributing to the mortgage. They sold that property and purchased a property, which was the subject of the dispute, in their joint names with a joint mortgage. The majority of the money for this property came from Ms. Dowden from the sale

of the first property registered in her name. The parties kept their financial affairs completely separate and Ms. Dowden was making a greater financial contribution. After the parties' relationship came to an end Mr. Stack sought a half share in the property. The House of Lords agreed with the Court of Appeal that Ms. Dowden should have a 65% share in the property. The case clearly involved a domestic property in which the parties were living as a family.

46. In ***Stack*** Baroness Hale stated at paragraph 54:

> *"It should only be expected that joint transferees would have spelt out their beneficial interests when they intended them to be different from their legal interests. Otherwise, it should be assumed that equity follows the law and that the beneficial interests reflect the legal interests in the property. I do not think that this proposition is controversial, even in old fashioned unregistered conveyancing. It has even more force in registered conveyancing in the consumer context."*

She added at paragraph 56:

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

47. In ***Oxley v Hiscock*** [2005] Fam 211 there was an agreement to share, but in unspecified proportions. Chadwick L.J. reviewed a number of judgments and found that the Court should impute a common intention as to the parties' respective shares on the basis of that which, in the light of all material circumstances, is shown to be fair and reasonable. At paragraph 71 he suggested that the extent of any share should be:

> *"... that share which the court considers fair having regard to the whole course of dealing between them in relation to the property"*

48. In ***Stack*** Lady Hale doubted the proposition of Chadwick L.J. in ***Oxley***, but supported the adoption of a holistic approach to quantification with the Court "*undertaking a survey of the whole course of dealing between the parties, and taking account of all conduct which throws light on the question what shares were intended.*" As she points out, this emphasises that the search is for what the parties, in the light of their conduct, must be taken to have intended, without consideration of what the Court thinks is fair. At paragraph 69 Baroness Hale set out some of factors that the Court may consider when considering rebutting the presumption that the beneficial interests should be the same as the legal interest when she said:

> *"In law, context is everything and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light*

upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual."

49. In ***Stack*** Lord Neuberger also rejected the approach taken by Chadwick LJ in ***Oxley*** when stating at paragraph 144:

> *"I am unhappy with the formulation of Chadwick L.J. in Oxley at paragraph 69, quoted by Baroness Hale at paragraph 61 of her opinion, namely that the beneficial ownership should be apportioned by reference to what is "fair having regard to the whole course of dealing between [the parties] in relation to the property". First, fairness is not the appropriate yardstick. Secondly, the formulation appears to contemplate an imputed intention. Thirdly, "the whole course of dealing ... in relation to the property" is too imprecise, as it gives insufficient guidance as to what is primarily relevant, namely dealings which cast light on the beneficial ownership of the property, and too limited, as all aspects of the relationship could be relevant in providing the context .by reference to which any alleged discussion, statement and actions must be assessed. As already explained, I also disagree with Chadwick LJ's implicit suggestion in the same paragraph that "the arrangements which [the parties] make with regard to the outgoings" (other than mortgage repayments) are likely to be of primary relevance to the issue of the ownership of the beneficial interest in the home."*

Lord Neuberger went on to add:

> *"145. I am rather more comfortable with the formulation of Gray and Gray, also quoted in paragraph 61 of Baroness Hale's opinion, that the court should "undertak[e] a survey of the whole course of dealing between the parties ... taking account of all conduct which throws light on the question what shares were*

intended". It is perhaps inevitable that this formulation begs the difficult questions of what conduct throws light, and what light it throws, as those questions are so fact-sensitive. "Undertaking a survey of the whole course of dealings between the parties" should not, I think, at least normally, require much detailed or controversial evidence. That is not merely for reasons of practicality and certainty. As already indicated, I would expect almost all of "the whole course of dealing" to be relevant only as background: it is with actions discussions and statements which relate to the parties' agreement and understanding as to the ownership of the beneficial interest in the home with which the court should, at least normally, primarily be concerned. Otherwise, the enquiry is likely to be trespassing into what I regard as the forbidden territories of imputed intention and fairness.

146. In other words, where the resulting trust presumption (or indeed any other basis of apportionment) applies at the date of acquisition, I am unpersuaded that (save perhaps in a most unusual case) anything other than subsequent discussions, statements or actions, which can fairly be said to imply a positive intention to depart from that apportionment, will do to justify a change in the way in which the beneficial interest is owned. To say that factors such as a long relationship, children, a joint bank account, and sharing daily outgoings of themselves are enough, or even of potential central importance, appears to me not merely wrong in principle, but a recipe for uncertainty, subjectivity, and a long and expensive examination of facts. It could also be said to be arbitrary, as, if such factors of themselves justify a departure from the original apportionment, I find it hard to see how it could be to

anything other than equality. If a departure from the original apportionment was solely based on such factors, it seems to me that the judge would almost always have to reach an "all or nothing" decision. Thus, in this case, he would have to ask whether, viewed in the round, the personal and financial characteristics of the relationship between Mr Stack and Ms Dowden, after they acquired the house, justified a change in ownership of the beneficial interest from 35-65 to 50-50, even though nothing they did or said related to the ownership of that interest (save, perhaps, the repayments of the mortgage). In my view, that involves approaching the question in the wrong way. Subject, perhaps, to exceptional cases, whose possibility it would be unrealistic not to acknowledge, an argument for an alteration in the way in which the beneficial interest is held cannot, in my opinion, succeed, unless it can be shown that there was a discussion, statement or action which, viewed in its context, namely the parties' relationship, implied an actual agreement or understanding to effect such an alteration."

50. In ***Laskar v Laskar*** [2008] EWCA Civ 347 Lord Neuberger commented on the concept of fairness and how it had been approached in ***Stack***, when stating at paragraph 33:

> *"It is sensible to stand back and see whether that looks a fair result. It was pointed out in Stack, that what seems fair to the court is not the basis upon which one reaches a decision in this sort of case but it does seem to me that it is not unhelpful to see whether the outcome looked at in this way seems unjust, because, if it is, it may be worth revisiting the reasoning."*

51. Having regard to the approach and comment in the above cases I do not agree with P that the Court should undertake the enquiry based upon the dicta of Chadwick L.J. I prefer the approach advocated by Lady Hale in ***Stack***, whilst remaining sensitive to what was said by Lord Neuberger concerning fairness in ***Laskar***.

52. P places reliance upon the case of ***Laskar*** when submitting that, as he is contending that the relevant property in the matter before me involves an investment and not a domestic arrangement, this is not a case in which the principle in ***Stack*** of the presumption of beneficial ownership following legal ownership is applicable. In ***Laskar*** the appellant was the respondent's daughter. As the mother, who was a secure tenant, could not afford to buy the property on her own they purchased it under a council right to buy scheme using a mortgage and by jointly contributing to a deposit. As agreed by the parties the mother moved out of the property to live with another daughter and the property was let out. The mother paid all repairs, handled the rents and the mortgage was paid out of the rental income. Following a later dispute between the parties the daughter wanted to realise the interest in the property and an account of the rental income received. The trial judge ruled that the daughter had only a 4.28% interest purely on the basis of the sum she contributed to the deposit and that no account of rent should be made. In the Court of Appeal, the daughter argued that the presumption of equal shares had not been rebutted. If she was found to be wrong on that she

contended that (i) the discount under the right to buy scheme should have been apportioned equally; (ii) half the liability under the mortgage should be treated as a contribution; and (iii) she was entitled to a share of the rental income, especially if she is right on any of the points on beneficial ownership.

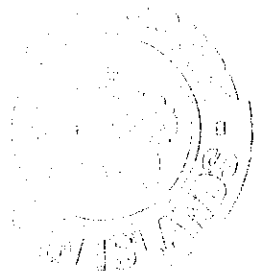
53. In his judgment Lord Neuberger considered whether the presumption of beneficial interest following legal interests set out in ***Stack*** applied to the case, as argued by counsel of the appellant. Lord Neuberger helpfully compared the two cases stating:

> *"15. The appellant contends that the reasoning of the majority of the House of Lords in Stack v Dowden [2007] UKHL 17 [2007] AC 432 compels a finding in the present case that the beneficial ownership of the property was held in equal shares by the parties. As Chadwick LJ pointed out when giving permission to appeal, Stack was decided after HHJ Levy gave his decision in this case. In Stack the two parties who purchased the house in question were living together in a long-term sexual relationship, and had children when they purchased the house, which they intended to be, and indeed was occupied as, their family home. It is by no means clear to me that the approach laid down by Baroness Hale of Richmond in that case was intended to apply in a case such as this. In this case, although the parties were mother and daughter and not in that sense in an arm's length commercial relationship, they had independent lives, and, as I have already indicated, the purchase of the property was not really for the purpose of providing a home for them. The daughter hardly lived there at the*

time it was purchased, and did not live there much if at all afterwards, and the mother did not live there for long. The property was purchased primarily as an investment.

16. Lady Hale's speech began by identifying the problem to be addressed as relating to "a cohabiting couple" – see paragraph 40 (and see paragraph 14 of the speech of Lord Walker of Gestingthorpe). But a number of the remarks in the course of her speech indicate that her reasoning was intended to apply to other personal relationships, at least where the property is purchased as a home for two (or indeed more than two) people who are the legal owners – see especially at paragraph 58 with the reference to "the domestic consumer context". Accordingly I think HHJ Behrens was right to conclude in Adekunle v Ritchie [2007] in the Leeds County Court that the reasoning in Stack applied to a case where a house was purchased by a mother and a son in joint names as a home for them both.

17. It was argued that this case was midway between the cohabitation cases of co-ownership where property is bought for living in, such as Stack, and arm's length commercial cases of co-ownership, where property is bought for development or letting. In the latter sort of case, the reasoning in Stack v Dowden would not be appropriate and the resulting trust presumption still appears to apply. In this case, the primary purpose of the purchase of the property was as an investment, not as a home. In other words this was a purchase which, at least primarily, was not in "the domestic consumer context" but in a commercial context. To my mind it would not be right to apply the reasoning in Stack v Dowden to such a case as this, where the parties primarily purchased the



property as an investment for rental income and capital appreciation, even where their relationship is a familial one."

54. Lord Neuberger highlighted that the parties in both cases had kept their financial affairs separate and he concluded at paragraph 19 that it would not be right to apply ***Stack*** to this case as the property *"had not been primarily purchased for either party let alone for the parties to share"* as a home but primarily as an investment. He felt that as the mother had three or four other children she would not have intended the appellant daughter to be the only one who benefited. Lord Neuberger regarded the council house discount as being a contribution and found that, similar to ***Stack,*** the parties' contributions to the purchase price were significantly different. He felt that the primary reasons why the daughter had been brought in as a co-purchaser was because the mother could not afford to buy it on her own. He added that, had ***Stack*** applied, he would have found that the presumption had been rebutted on the facts. Lord Neuberger fell back on the resulting trust. He concluded that: (i) the discount was a contribution by the mother by way of her status as secure tenant and should not be shared; (ii) that the liability under the mortgage applied to both parties and so represented a £21,500 contribution by the daughter; iii) the appellant therefore had a 33% interest in the property; and iv) there should be no account as the daughter had been initially happy with arrangements and, in any event, most of the income was swallowed up by mortgage payments and repairs.

55. Although, I am satisfied that D knew when purchasing that P always had in mind that it should be a sound investment, I do not find that the purchase was primarily for commercial reasons, namely solely as an investment or an income bearing asset as seen in ***Laskar***. It is clear from the parties' exchanges, for example as evidenced in emails to themselves and to third parties at the time of purchase, that the parties intended the property to provide a home for D, to be a place for P to stay with her to facilitate their intimate relationship when he infrequently visited the Cayman Islands. Again this is different to ***Laskar***, a case in which Lord Neuberger specifically stated[26] that ***Stack*** should not apply, as the property had not been purchased as a home for either party. However, I accept that the parties never intended this to be a home in which both of them would live together for any extended period of time. The evidence does not support a contention that the intention was that it be a home for her for life if P was alive, as it is clear from the parties' exchanges that P envisaged and D recognised that at some stage, unless one of them had passed away by that time, the property could be sold for a profit as a sound investment with each of them sharing the net profit. Although, D did on occasion rent out a room in the property, this was therefore not a property purchased for purely commercial reasons and solely investment driven as seen in ***Laskar***.

[26] See paragraph 51 above.

56. The arrangement between the parties before me falls somewhere in between the commercial situation between family members found in ***Laskar*** and the purely domestic circumstances found in ***Stack,*** it being a property purchased as a home for primarily D at least while their long-term intimate relationship persisted, as well as with the aim of it being a sound investment resulting in profit when sold. The parties did not live together as husband and wife in a genuine cohabiting relationship of the type that existed in ***Stack*** and to which Lord Neuberger referred when also highlighting at paragraph 16 in ***Laskar*** whether the property was purchased as a home for two or more persons. Apart from the joint account for property expenses, P kept his finances separate. Despite this I view the arrangement between this couple in an intimate relationship to be one in a domestic context, albeit also one with an investment element. It was not a purely investment arrangement. That said, I accept that it is not the classic type domestic situation where the parties actually live together in the relevant property for significant periods of time.

57. P argues if the presumption in ***Stack*** could arguably apply here, then I should consider that to be rebutted anyway. On the facts in ***Stack*** there was a departure from the presumption of equality, and the outcome was that the shares of the beneficial interest were substantially proportionate to the financial contributions of the parties.

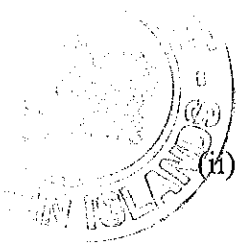
58. When considering this submission I also have regard to the case of ***Jones v Kernott [2011] UKSC 53***[27] in which the Supreme Court was again dealing with the ownership of a property between a non-married couple. It involved a £245,000 property with a £38,000 balance remaining. Ms. Jones had paid £6,000 towards the £30,000 purchase price of the property from her funds from the sale of her mobile home, with the balance being funded by a mortgage. She paid the property outgoings including the mortgage and bills and Mr. Kernott paid for some property improvements. Eight years after the parties had purchased the property, the parties separated and he left the property, making no further contributions to the home. The parties cashed in a joint life insurance policy and divided the proceeds which enabled him to purchase his own home three years later. Thirteen years after their separation Mr. Kernott stated that he wanted his share from the property and Ms. Jones started legal proceedings to obtain a declaration that she owned the entire beneficial interest. She argued that, although at the time of the separation there may not have been enough evidence to displace the presumption that their beneficial interest followed the legal title, events since the separation showed that their intentions with respect to the beneficial interest had changed and that his beneficial interest had reduced due to his lack of financial contribution since moving out. The Supreme Court upheld the decision of the presumption of initial equal shares was overtaken by a change of intention and that the shares should be 90% to Ms. Jones and 10% to Mr. Kernott.

[27] Tab 4 of the Trial Bundle filed by P.

59. Lord Walker and Lady Hale reiterated the principle enounced in ***Stack*** that where people purchase a family home in their joint names the presumption is that they intend to own the property jointly in equity also. At paragraphs 19 to 22 they stated that the presumption of joint beneficial ownership arises because (i) purchasing property in joint names indicates an "emotional and economic commitment to a joint enterprise" and (ii) due to the practical difficulty of analysing respective contributions to the property over long periods of cohabitation. They agreed that the presumption may be rebutted by evidence that it was not, or ceased to be, the common intention of the parties to hold the property jointly, stating at paragraph 25 that this may more readily be shown where the parties did not share their financial resources. They noted that if there is no clear evidence of intention, a question arises as to when the Court can infer such intention and when the Court can, instead, impute an intention. At paragraph 26 to 27 with reference to ***Stack*** and to ***Gissing v Gissing*** [1971] AC 886, 887 Lord Walker and Lady Hale commented that an inference is drawn where an actual intention is objectively deduced from the dealings of the parties; an imputation is one attributed to the parties by the Court. At paragraph 31 they added that the search is primarily to ascertain the parties' actual intentions, whether expressed or inferred from their conduct, but if it is clear that the beneficial interests are shared but impossible to infer a common intention as to the proportions in which they are shared, the Court will have to impute an intention to them which they may never have had.

60. From ***Jones v Kernott*** one can deduce that the following principles apply:

(i) where a family home was bought in joint names of an unmarried cohabiting couple who were both responsible for the mortgage, but without any express declaration of their beneficial interest, the starting point is that they own the property as joint tenants both in law and equity;



(ii) that presumption can be displaced by showing there was a different common intention at the time of the purchase or later evidence that their common intention was, in fact, different, either when the property was purchased or later;

(iii) common intention is to be objectively deduced (inferred) from the conduct and dealings between the parties;

(iv) where it is clear that they had a different intention at the outset or had changed their original intention, but it is not possible to infer an actual intention as to their respective shares, then the court is entitled to impute an intention that each is entitled to the share which the court considers fair having regard to the whole course of dealing between them in relation to the property; and

(v) each case will turn on its own facts; financial contributions are relevant but there are many other factors which may enable the Court to decide what shares were either intended or fair.

61. When I consider the principle set out in paragraph 60(v) above I remind myself that Lady Hale stated at paragraph 61 in ***Stack*** that the search is for the result which reflects what the parties must, in the light of their conduct, have intended and the Court must not abandon that search in favour of a result which emanates from the Court's own view about what it thinks is fair.

Conclusion

62. In cases such as this, where there is joint legal ownership, the onus is on P to demonstrate on the facts that the beneficial interest divided between him and D is different to the title. Each case of this nature turns on its own facts. Having found that this case can be regarded as being in a domestic context and having regard to the factors highlighted by Lady Hale at paragraph 69 in ***Stack*** I find that:

(i) this was not a case in which the parties cohabited, save for brief periods of time when P visited Grand Cayman or met overseas.

(ii) the parties were not living as husband and wife or have any children from their relationship;

(ii) P separated his finances unrelated to the property.[28]

(iii) that part of the reasons why the property was put into their joint names was a practicable one, to enable borrowing by P and to enable D to manage the property related matters as she lived locally;

[28] Joint bank account opened at the outset which P only utilized for expenses related to the property and which D also used as her sole bank account.

(iv) that P and D were both striving to purchase a property that would be a good investment;

(v) that, albeit a flexible one, the arrangement between the parties was that D would meet the day to day running costs of the property, whereas P would pay for the purchase price and service the loan taken out in his sole name;

(vi) P paid the full costs of purchase of the property[29] and he serviced the loan until the sale of the property;

(vii) that D failed to meet all of the running costs of the property and P, although having made many payments over the years, decided to no longer meet the shortfall of payments which led to substantial arrears in the strata fees.

63. However, I also find:

(i) that the parties were in a long term intimate relationship from 2004 to 2014;

(ii) that although there was an investment element in the property purchase, it was primarily to be a home for D and to be a property to facilitate the parties' relationship;

(iii) that D resided in the property as her home from the time of purchase in December 2006 to its sale in August 2014;

[29] Save for $195 closing costs paid by D.

(iv) that P and D deliberately registered the title as joint proprietors in such a way as they intended the other to acquire the full benefit of the property if the other passed away;

(v) that despite P's greater financial contributions, there is insufficient evidence, from the parties' actions and statements, of an express or inferred common intention that the parties should hold the beneficial interest in the property in a proportion different from the legal interests, namely that upon sale only the net profit would be divided. P, although believing the arrangement was that D would not get half of the net proceeds of sale and would only get a share of the profits[30], admitted in cross-examination that there was no specific exit plan and he could not recall if prior to the sale of the property he discussed with D that the arrangement concerned only the profit[31];

(vi) After the purchase of the property there is insufficient or no compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from the legal interests.

64. P has not satisfied me that the presumption of equality laid down in ***Stack*** should be rebutted in this case. Despite the factors outlined in paragraph 62 this case

[30] As indicated by him to Mr. Ramessar by him in an email - see paragraph 20 herein.
[31] See paragraph 5 herein.

does not fall into the category of one in "very unusual" circumstances in which the beneficial interests in the property will be found to be different from the legal interests.

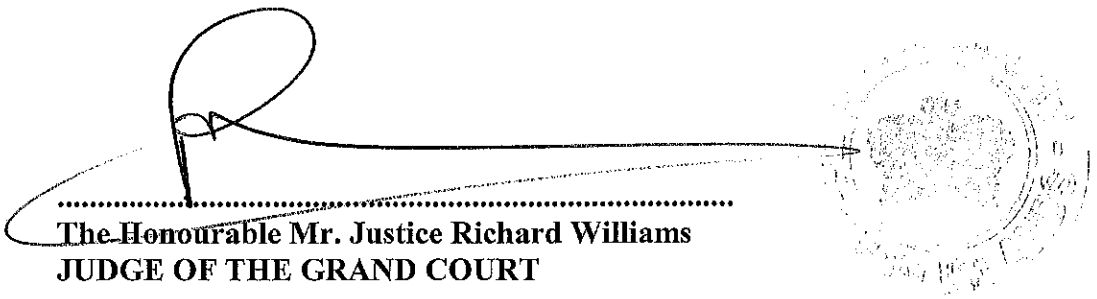
65. The parties therefore have a 50% interest in the proceeds of sale. There is an issue as to what they are. I am aware that the amount being held in escrow after the sale of the property is US$194,868.32.[32] At paragraph 38 herein I found that the correct proceeds of sale figure available for division should be arrived at having regard to the $90,000 balance of the loan that existed at the time of the sale as well as any interest accruing thereafter. On the basis that P is responsible for making all the payments on the loan since the sale and that he will be responsible for paying any balance (including interest) on the loan that still remains,[33] this will reduce the net proceeds of sale available for a 50% division to US$104,868 minus any interest that has accrued on the loan account since the sale of the property.

Costs

66. My preliminary view is that neither party has fully succeeded in their claims, but each have been partly successful. I intend to make no order for costs unless either party notifies the Court in writing within 10 working days of receipt of this sealed judgment that a different order as to costs is sought.

[32] After costs of sale and payment of strata debts.
[33] At the time of the hearing the balance w was $20,000.

67. I conclude by thanking both Counsel for their helpful written submissions and I also thank the parties for their extreme patience in awaiting this decision.



The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT