IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: D 132 of 2007

BETWEEN	**SIDEY ALFARO RODRIQUEZ**	**PETITIONER**
AND	**EVORT EARL EBANKS**	**RESPONDENT**
AND	**RHONDA LUE EBANKS**	**INTERVENER**

IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 27TH, FEBRUARY 2012, 16TH TO 17TH OCTOBER 2012 AND 3RD, APRIL 2013

Appearances: Ms Kate McClymont of Broadhurst LLC for the Petitioner

Mr. Anthony Akiwumi of Stuarts Walker Hersant for the Intervener

(Ms. Sheridan Brooks of Brooks & Brooks for the Respondent, no longer appearing.)

Dispute between wife and intervening sister-in-law over entitlement to matrimonial home – legal title registered in name of sister-in-law – whether legal title held subject to constructive trust of wife's beneficial interest.

JUDGMENT

The history of the action

1. This action began in the context of divorce proceedings in which there was a dispute between the petitioner Mrs. Ebanks and the respondent Mr. Ebanks, over the beneficial entitlements to their matrimonial home.

2. The legal title to the home having been transferred to the Intervener in circumstances which are to be examined in this judgment, the Intervener was first sought to be brought into the proceedings by Mrs. Ebanks but that application was

resisted. For reasons expressed in a directions ruling of 26th March 2009, the Intervener was not then joined in the action.

3. It having become clear to her that orders affecting the registered title could nonetheless be made in these proceedings as between Mrs. and Mr. Ebanks, the Intervener eventually applied to intervene in the proceedings and that application was acceded to in a written ruling delivered on 28th February 2011.

4. After a number of delays for different reasons including the failing health of Mr. Ebanks, the trial of the dispute over title was eventually conducted over a number of days between 27 February 2012 and 3rd April 2013, and over the course of which, cross-examined testimony was taken from each of the parties. Affidavits and witness statements were also provided by them and by a number of other persons. Sadly, after the conclusion of the hearing but before final arguments and before judgment could be given, Mr. Ebanks passed away on 26 August 2013.

5. Arguments were raised following the death of Mr. Ebanks by Ms. Brooks as his attorney of record and on behalf of the Intervener by Mr. Akiwumi, urging me to regard the entire action as having abated upon the death of Mr. Ebanks. On behalf of Mrs. Ebanks, Ms McClymont filed her arguments to the contrary.

6. After a trial of that issue, it was held that a cause of action survived in the nature of a *lis* as between Mrs. Ebanks and the Intervener in whose name the title to the Ebanks matrimonial home had become registered. A written judgment was delivered on the 21st February 2014 giving reasons for that decision and directions also then given for the submission of the final arguments in the action as it survived as between Mrs. Ebanks and the Intervener.

7. Those arguments having been submitted by Ms. McClymont on behalf of Mrs. Ebanks, and by Mr. Akiwumi on behalf of the Intervener, they have been considered and this is the final judgment.

The factual background

8. There is no dispute that the home located at 13 EvCo Tour Lane, at Spotts Grand Cayman ("the Property"), was the matrimonial home of Mr. and Mrs. Ebanks and their two children.

9. The dispute is over whether Mrs. Ebanks acquired a beneficial interest in the Property, legal title to which was never taken or held in her name.

10. Although the Property was acquired during the marriage, title was first taken in the joint names of Mr. Ebanks and his mother, Jannitta Ebanks. Thereafter, in a series of transactions, the Property was subdivided and some parcels of it sold, with the remainder (that upon which the matrimonial home stands) transferred by Mr. Ebanks and Jannitta Ebanks together, into the sole name of Jannitta Ebanks for no consideration but for "*natural love and affection for my mother*", as appears from the deed of transfer. This occurred on 7th March 2000, some eight years into the marriage of Mr. and Mrs. Ebanks and at about the same time as they went into occupation of the Property with their children.

11. After Jannitta Ebanks died intestate in February 2006, the Property was transferred in April 2007 by her administratrices – her daughters Yduleen Sue Buckeridge and Rhonda Lue Ebanks (the Intervener) – into the sole name of the Intervener and as appears from the deed of transfer; as "*being the person entitled thereto on the intestacy of the deceased*".

12. Title has since remained in the sole name of the Intervener.

13. That devolution of title is alleged by Mrs. Ebanks to be the fulmination of the intention of Mr. Ebanks, his mother and sister the Intervener, from the outset of the acquisition of the Property, to defeat her beneficial interests in the Property. It is her assessment and assertion that, from the outset of her marriage, she was ostracised by those on the distaff side of her husband's family. She cites her abiding suspicion of collusion between them to insulate what they perceived to be their son's and brother's interests, against any entitlement she might acquire by virtue of her marriage to him.

14. The history of the relationships and the circumstances under which the Property was acquired must therefore be examined.

15. Mr. and Mrs. Ebanks commenced their relationship in 1991. They first met during a visit of Mr. Ebanks to her native Costa Rica , later became engaged and, on the 22nd November 1992, were married in the Cayman Islands, she having moved to take up residence here because of their relationship.

16. On 1st March 1994, their first child Eric was born and on 14th December 1995, their second child, Jessica, was born.

17. Mrs. Ebanks' testimony was that it was at her instigation that the decision was made to acquire land for the construction of a matrimonial home.

18. The family had been living in rented premises and it made no sense to her that money that could be applied towards ownership should be spent on rent. The family was already assured of a fairly steady income from Mr. Ebanks' EvCo

Tours bus business and, as she herself earned a modest income, she felt assured that they could undertake the financing of their own home.

19. The Property, which then comprised a much larger tract of undeveloped but very swampy land, was identified. It was owned by other members of Mr. Ebanks' family who offered to sell it for $60,000 and the purchase was agreed in 1997.

20. According to Mrs. Ebanks, the purchase price was agreed to be raised by a deposit of $15,000 from their own savings and by borrowings of $45,000 in 1997 from Barclays Bank.

21. She admits to having been advised by Mr. Ebanks at the time in 1997 that, as she was not then working, his mother would be needed to join in the loan application with him. She explained that he said this was necessary because his mother had an established relationship with the bank and would be acceptable to the bank as surety. There was, she insists, no suggestion at that time that title was to be taken in his and his mother's name to the exclusion of her own.

22. The fact that this had been done did not come to her attention until sometime later and when she raised her concerns about it, Mr. Ebanks passed the matter over with the explanation that the bank had insisted on his mother's name being put on the title as co-borrower. He assured her that there was no need for her name to be on the title and that it would in any event cost $5,000 to put her name on it, money that they could not afford. Mrs. Ebanks insists that Mr. Ebanks then, and on numerous occasions throughout the marriage assured her that the Property was to be regarded as "our family home", despite his mother's name being on the title.

She says that she was unhappy about this state of affairs but because she trusted her husband, she accepted his assurances.

23. While Mr. Ebanks sought in his affidavit to deny making any such promises to Mrs. Ebanks, I note here what he had to say about the acquisition of the Property in cross- examination by Ms McClymont. In response to a suggestion from her that he had acquired some savings during the marriage and before the Property was bought:

> *Answer:* *"In the five years before the Property was acquired I did always try my best to accumulate some savings."*
>
> *Suggestion:* *You used those savings to acquire the Property you bought with your mother.*
>
> *Answer:* *I went to the bank to get a loan along with my mother. I had to contribute a couple of dollars – I had to come up with some money. I can't remember directly off hand now just how much I had to come up with. My mother did help me obtain a loan from the Bank because the Bank would not grant me a loan in my sole name – the two of us were joint borrowers on the mortgage. She did this to help me obtain a home for my family".*

24. I note that the words in emphasis are in keeping with Mrs. Ebanks' case but quite inconsistent with legal title being subsequently passed into the sole name of Jannitta Ebanks.

25. As to the source of fund for the deposit of $15,000, Mrs. Ebanks gave in her evidence a detailed account of this money having been saved through payments made by Mr. Ebanks into a "partner" arrangement managed by Jannitta Ebanks. She explained that Mr. Ebanks would pay in regularly as much as $400 per week and when his "draw" came around, would receive as much as $10,000 - $15,000. His payments into the "partner" were monies earned from the EvCo Tour business, his only source of income known to her at that time. She asserted that it was from one or two such "draws" that they had obtained the money to pay the deposit of $15,000 towards the purchase price, leaving the need for bank financing of only $45,000 for the balance of the purchase price.

26. While Mr. Ebanks denied this – asserting inconsistently with his other evidence (e.g. above) that his mother provided the $15,000 and moreover, provided the funds for repayment of the bank loan – he did admit under cross-examination to having participated in the "partner" arrangement and to having had drawings of as much as $10,000 at a time accumulated from weekly funds he had paid in. He also admitted that these funds were derived from income from his EvCo Tours business or from a heavy equipment operation which he also ran to supplement his income, "*when money from EvCo Tours was not coming in*".

27. This, like other aspects of Mr. Ebanks' testimony to be identified below, I regard as providing important verification of pivotal aspects of Mrs. Ebanks' testimony.

28. I find it to be improbable, that these admitted sources of income would have been available to Mr. Ebanks yet, as he asserted in his testimony, he would have imposed upon his mother who was herself of limited means, to provide the

deposit for the purchase of the Property and for regular repayments on the bank loan.

29. Rather, as Mrs. Ebanks testified, I find that the bank loan was repaid from family income – that which came in to Mr. Ebanks primarily from the EvCo Tours business during the marriage and from her own employment from time to time in various jobs. She testified that in 1997 she returned to work outside of the home. From 1997 until she eventually went to work at Royal Bank of Canada in 2000, she worked at the George Town hospital, at Choices Boutique (owned by Jannitta Ebanks) and at the Westin hotel. During this time she continued, as she had since the marriage, to work in the EvCo Tours office, work for which she was unpaid. The evidence is that from her latter position with the bank she earned some $2,600 per month.

30. Mrs. Ebanks insists that it was in the same spirit of ownership and frugality, that they set about clearing and filling the house site once the Property was acquired getting ready for construction of the house.

31. From photographs in evidence which show the very swampy conditions, this exercise must itself have been a significant undertaking and Mr. Ebanks tendered in evidence a cheque for $2,987.00 paid for fill for the site. The photographs show a bulldozer in water up to its tracts and Mrs. Ebanks spoke also of the extensive manual labour in which she joined in, for the uprooting and clearing away of mangrove plants and other tasks. There was compelling evidence from her adult son (from a previous marriage) Gustavo Rodriquez in support,

explaining her involvement in the manual work needed for the preparation of the site and during the building of the house.

32. Mrs. Ebanks testified, and Mr. Ebanks agreed, that when the site had been cleared and filled, they set about erecting the building in stages, as funds became available from their savings. This meant that it took some three years of work before they could occupy the house. But when they did so in March 2000, in its still as yet unfinished state, she spoke of their sense of satisfaction in not having had to take further borrowings from the bank.

33. The family having moved into the house, money spent on rent – according to Mrs. Ebanks (and acknowledged by Mr. Ebanks) about $1,000 per month – was to be set aside for repaying the remaining bank loan and for completing the house.

34. Although this was the plan, there was soon a significant turn of events in April 2000, when one of the sub-divided parcels of the Property – Parcel 530 Rem 3 – was sold to a developer, Brac Realty and Investments Co. Limited ("Brac Realty") for $83,000.

35. Mrs. Ebanks testified that Mr. Ebanks was over-joyed in bringing her the good news of the sale, as it meant that the balance of the bank loan could at once be immediately repaid, with funds also available to advance the finishings to the house, including the installation of a modern kitchen and appliances.

36. These things were in fact done, says Mrs. Ebanks – most significantly for present purposes, the remainder of the bank loan was cleared off in the following month, May 2000.

37. It was, however, in the course of the transaction of the sale to Brac Reality that Mrs. Ebanks said that she got her most disappointing news. It was then brought to her attention by an employee of Brac Realty who had seen the documentation, that the house site of the Property had been transferred by Mr. Ebanks from his and his mother's names, into his mother's name alone and that the other portion then to be sold to Brac Realty had been transferred into their joint names, both transfers having been effected at the time of the subdivision in July 1999.

38. She said that she accosted Mr. Ebanks about this revelation. According to her, he simply responded that he had made the transfers "*out of love and affection for my mother*". To this she retorted without any further response from him: "*What about love and affection for me, your wife*?"

39. It was then she said, that she finally realised that she had been betrayed and came to recognise that the promise and understanding between herself and her husband about her home had been broken.

40. She testified that all of her income from her various jobs had gone into maintaining the household during the seven years or so that the family occupied the Property as the matrimonial home, until their separation in 2007. Some of her money was also spent to improve the Property. In this regard, there is her unrefuted evidence of a loan from her bank in the amount of $4,000 and which she said she applied to the development of a greenhouse nursery in the backyard of the Property. She testified to having done this as a family investment and that the decorative plants she grew in the nursery were sold by her, with the help of

the children, from her vehicle by the wayside on weekends. This money, she said, was applied to augment the family income.

41. She said she was aware that the loan payments to Barclays Bank were being met by Mr. Ebanks from their income from EvCo Tours and that this happened until May 2000 when the balance was cleared off by the final lump sum payment. With their combined income and her salary going to meet the household expenses, there simply was no reason, she insists, why Mr. Ebanks would not have been able to make those payments. In particular, she insists that he would have had no need for funding from Jannitta Ebanks to make these payments; even if his mother's modest income, from her small clothing store business, would have allowed her the means – a proposition which Mrs. Ebanks did not accept.

42. In this regard, I note that the bank statements of EvCo Tours Limited and those of Mr. Ebanks' personal bank account, show significant movements of funds. This suggests that, at the relevant times, Mr. Ebanks did indeed have income more than sufficient to make the loan payments.

43. That fact, coupled with the apparent use of the proceeds of sale of Parcel 530 Rem 3 for clearing off the balance, and with no account ever having been rendered by Mr. Ebanks for the very significant balance of those proceeds (a fact which he did not deny), is compelling evidence in support of Mrs. Ebanks' testimony. In this regard, Mr. Ebanks' terse response in cross-examination was as follows:

> *"I intended to do a lot of things with this money – like pay the mortgage at Barclays Bank but I could not – that was my intention, I also wanted to buy a bus.*

I think we [meaning he and his mother] *got a couple dollars paid in on the mortgage but I had to use the money to give her [meaning Mrs. Ebanks] and the children in Costa Rica.*

I cannot remember right now how much of the mortgage was paid down".

44. This suggestion that the bulk of the proceeds of sale of $83,000 went to support his family while they were in Costa Rica was rejected by Mrs. Ebanks. She explained that although she had gone to live there with the children for a year to allow them to know her side of the family and to become proficient in Spanish, specific arrangements were agreed between herself and Mr. Ebanks for their keep while there. In particular, income of $5,000 per month from rental of three of the EvCo Tour buses to Kirk Sea Tours allowed him to send them $1,000 per month. This was sufficient for them to live on in Costa Rica, while allowing him $4,000 to meet expenses in Cayman.

45. While Mr. Ebanks acknowledged this arrangement, he sought to dismiss the Kirk Sea Tours income as insufficient funding, claiming that not only had he sent them the bulk of the $83,000 but also that he had to *"kill myself working"* and "*work like a dog*", to maintain Mrs. Ebanks and the children while they were in Costa Rica.

46. Such trite and non-specific responses from Mr. Ebanks must be contrasted with the detailed evidence of Mrs. Ebanks. They lead, in my view, to the clear conclusion already expressed, that the Property was acquired by means of the matrimonial income of Mr. and Mrs. Ebanks including the proceeds of $83,000

from the sale of Parcel 530 Rem 3. I reject the equivocal contention of Mr. Ebanks in his evidence (that especially relied upon by the Intervener) that Jannitta Ebanks provided the deposit of $15,000 and the rest of the funds to repay Barclays Bank.

47. This finding is, of course, also germane to the issue of the common intention of Mr. and Mrs. Ebanks in respect of the Property, as it supports her contention.

48. Mr. Ebanks, for his part, was at best again equivocal about the common intentions of himself and Mrs. Ebanks. While in his evidence-in-chief he sought to refute her account of their discussions and understanding about the Property, the following responses were elicited from him by Ms. McClymont during cross-examination. It follows on his assertion – which I regard as highly unlikely in itself – that Mrs. Ebanks had often insisted with him that she had no intention to remain in Cayman, wished to acquire no interest in the Property, but intended to return to live permanently in Costa Rica.

"Mr. Ebanks:	*She did not care about having her name on the property. She had no intent to live in Cayman.*
Ms. McClymont:	*I put it to you that you told her that her name could not be on the property, that you would not be able to get a loan because her income was too low for the bank.*
Mr. Ebanks:	*That is not so. I never said her name could not be on the property because we would not be able to get a loan because her income was too low for the bank.*
Suggestion:	*You assured her there was no need to have her name on the title because it was the family house.*

Answer: *When I told her that she could put her name on the title, she said she did not care about having her name on the title – she wanted to live in Costa Rica by her Mom where she got her own house; that was her thing."*

49. While I do not accept those responses from Mr. Ebanks as factual, they do betray an implicit acceptance on his part that Mrs. Ebanks was entitled to have her name registered on the title to the Property; why else (as his last response reveals) would he have thought that putting such a proposal to her was appropriate?

50. Further evidence of Mr. Ebanks' equivocation appears from the conflicting reasons he gave during his evidence for transferring title into his mother's name. At first, he insisted that it was done because she had provided both the deposit of CI$15,000 as well as the funds for the monthly repayments of the bank loan. Later, in cross-examination, he explained that the transfer was done to protect the Property from "*my creditors*". And when pressed, he replied that by this he meant specifically the bank because of the lien it held - not as against the Property for anything more than the balance of the charged loans - but as against three of the buses owned by EvCo Tours Limited.

51. To quote his evidence:

"My mother sometimes helped me to pay the mortgage. I had to pay her back. I transferred the land to her because I owed my Mom a lot of money. I had to give it back to her – all the money she gave me – the bank was threatening to take my buses. I took my name off so the bank could not take that property because of the debt I owed the bank for the buses."

52. No evidence of a bank lien against the buses was adduced in these proceedings. At all events, neither of these equivocal explanations of Mr. Ebanks is consistent with the reality of the Property loan being completely cleared off near contemporaneously with the sale of Parcel 530 Rem 3 and with the transfer of title to the Property into the sole name of his mother Jannitta Ebanks.

53. And there are yet further difficulties standing in the way of Mr. Ebanks' story being accepted.

54. While both he and the Intervener insisted that their mother Jannitta Ebanks was entitled to the Property because of her funding of its purchase, there was not a shred of evidence produced to show that Jannitta Ebanks made any payments to the bank against the loan. Nor, for that matter, as against the deposit of $15,000.

55. One would expect such records to exist if payments were made. Jannitta Ebanks was described by the Intervener as a prudent business woman. Albeit the proprietor of a small clothing store, she must nonetheless have routinely kept records and maintained accounts. Yet in the end, as one of her administratrices, the Intervener was not able to refute Ms. McClymont's suggestion that she had access to her mother's papers and business records but had not managed to produce any record of any payment in respect of the Property or in respect of EvCo Tours bank loan.

56. This must of course, all be examined in the context of the transfers of title to Jannitta Ebanks, not for valuable consideration, but for "*natural love and affection*", as a mere volunteer.

57. While one might recognise the expression *"natural love and affection"* as bromide often deployed locally for the avoidance of stamp duty, Mr. Ebanks and the Intervener may not be allowed to use the expression as an artifice to remedy the defects in their account: either the transfer of title into the name of their mother was for the valuable consideration of her repayment of the bank loan or it was for natural love and affection. The concepts are mutually exclusive.

58. Having nailed her banner to the mast of the fair ship "*affection*", the Intervener may not now attain her objective aboard the vessel of commerce called "*consideration*".

59. A similar sense of equity must operate to estop the Intervener from now denying Mr. Ebanks' declaration made to the Government in 2005 that the Property was matrimonial property.

60. This declaration was embodied in a formal written application submitted by him with the necessary help of Mrs. Ebanks, in which he asserted their entitlement to benefit from the National Recovery Fund in the aftermath of Hurricane Ivan. Mr. Ebanks declared that the Property was indeed his and Mrs. Ebanks' matrimonial home and that the funds were needed for the restoration of roof damage to habitable condition for his family.

61. On the basis of that declaration, a grant of $10,000.00 was given and applied to the repair of the roof. The Intervener may not now invite the court to regard Mr. Ebanks as having resiled from his declaration.

62. And it is just as well in passing that I note here my observation, that the case asserted by the Intervener and supported however equivocally in his evidence by

Mr. Ebanks, has an air of sophistication about it which is beyond that to be expected of Mr. Ebanks himself.

63. I make this observation because it was common to the evidence of all the parties, - including Mr. Ebanks himself - that he suffered a learning disability that hampered his ability to read and write. This was why it was necessary for Mrs. Ebanks to assist with the application to the National Recovery Fund and this lack of sophistication on his part, laid at the heart of her abiding concern that he had been prone to manipulation by her detractors within his family, being primarily his mother and sister, the Intervener herself. Indeed, it was accepted by the Intervener that her mother, her sisters, herself and Mr. Ebanks were very close and had become even closer after their mother died. She confirmed that even while their mother was alive, they had together assumed the responsibility of looking after Mr. Ebanks' affairs on account of his inability to read and write.

64. Notwithstanding this history and although she was his wife, and educated to the standard of a trained teacher in Costa Rica and at least well enough to be a bank teller here, the Intervener and Mr. Ebanks in his evidence, drew the line peculiarly at Mrs. Ebanks' assertion that she too had to assist him by assuming the role of secretary and book-keeper in the EvCo Tours office, after their marriage.

65. Mr. Ebanks specifically denied that she had rendered any such assistance, illogically but nonetheless disdainfully asserting that *"she did not even understand English"*. He asserted that as a native Spanish speaker, she was unable to assist and in fact made no contribution whatsoever of her efforts to the running of EvCo Tours. All this, despite the obvious photographic evidence to

the contrary. Some of these show her seated at the desk in the office after it had been relocated to their home to save the costs of rent at the former George Town office. Other photographs show them posing in unison as might be expected of a husband and wife team, dressed in their uniforms matching the bright blue colours of the EvCo Tour buses on display in the background.

66. This account from Mr. Ebanks and the Intervener I feel compelled to find, is a clearly orchestrated denial of any involvement on the part of Mrs. Ebanks in the business. Taken with the deliberate and timely transfers of title to Jannitta Ebanks, I find all the circumstances to be consistent only with a sophisticated scheme arranged with the help of his mother and later the Intervener, to ensure that Mr. Ebanks' assets stayed within the family to the exclusion of Mrs. Ebanks, his ostracised wife. To the exclusion also it would appear, of their two children, Eric and Jessica.

67. The scheme was inimical also to the intentions of Mr. and Mrs. Ebanks themselves which, I am satisfied, had evinced an agreement between them that she should have a beneficial interest in their matrimonial home. This is an interest which, in any event, I find had accrued after 15 years of marriage and during which she made very significant contributions to the well-being of her family, both in terms of monetary contributions, as well as her physical efforts for the building of the house, its upkeep and maintenance and for all their other needs.

68. A still further indication of where the true equities lie in this matter may be discerned from the attitude of the Intervener herself, in relation to her mother's

estate. In her application for grant of letters of administration for her mother's estate (filed jointly with her sister Yduleen Buckeridge on 9 May 2006) she declared an estimated value for the estate of $200,000.00.

69. On its face, this declared value could not have encompassed the Property which alone was estimated to have had a value of $334,000 at the time in 2006.

70. Moreover, shortly after the grant of letters, the Intervener and her co-administratrix Yduleen, on 31 May 2007 sold their mother's home to third parties for $410,000.00; as evidenced by the deed of transfer discovered from the Land Registry and produced in evidence by Ms. McClymont on behalf of Mrs. Ebanks.

71. When confronted with this evidence in cross-examination, the Intervener sought to explain that the declared value of $200,000 for the estate came about because she and her co-administratrix had notionally ascribed a value of only CI$80,000 to her mother's residence and $120,000 to the Property.

72. She asserted in this regard:

> *"The value declared for her estate did include 13 EvCo Tours Lane [(the Property)] but we did our own estimate, we did not go out and get a valuation – we put what we gathered would be a reasonable amount.*
>
> *That was the valuation that we assume the property was."*

73. This is not an explanation that any court could accept. The statutory form of affidavit (that required to be filed in support of applications for letters of administration) required the Intervener and her co-administratrix to state their true belief of the approximate value of their mother's estate. Yet the estimate given

bore no true relationship in reality to the value of an estate which when regarded as including their mother's home alone, was worth $410,000; let alone a value of approximately $750,000 when regarded as including the Property.

74. The only reasonable inference to draw from this is that the Intervener did not regard the Property as falling genuinely within her mother's estate and that her explanation for the declared value, given during this trial, is merely an attempt at *ex post facto* rationalization of the otherwise inexplicable value of $200,000.00.

75. In its totality, the evidence supports Mrs. Ebanks' belief that the Property - as between Mr. Ebanks, his mother and his sister - was meant to be held beneficially for him. As the Intervener herself admitted, neither she herself, her mother nor her sisters, took any part personally in the building of the matrimonial home on the Property. They each owned their own homes and had taken no part in the construction of the home which she was aware from the outset of its occupation, had become the family home of Mr. and Mrs. Ebanks and their children.

76. So far as the succession to the Property was concerned, the Intervener acknowledged that she was a mere volunteer although at one point in her evidence, she sought to suggest that she had earned an entitlement for having taken care of their mother during her failing health. This suggestion could not have been persisted in however, in light of the Intervener's admission in cross-examination that her mother had not been sickly for any significant period of time before she died and had been able to care for herself until near the end. It its finality, this suggestion of an entitlement in the Intervener, seems to have rested

upon the mere assertion that Jannitta Ebanks lived with the Intervener at some stage before she died and "*as her daughter I gave her whatever she needed*".

77. The circumstances of the devolution of title to the Intervener should, in my view, be more closely considered in light of her own relationship with her brother, Mr. Ebanks.

78. She admitted in cross-examination that "*Evort, my mother, my sisters and I were very close*" and to them being protective of him on account of his "*learning disability*". She also admitted to being aware that her brother and his wife had a "*troubled relationship*" and that "*the prospect of their separation had occurred to me even before it actually occurred*".

79. It was this awareness of her marital difficulties that also propelled their collusion to her detriment, according to Mrs. Ebanks

Conclusion on the facts

80. The foregoing I regard as the most salient aspects of the evidence going to the central issue of the common intentions of Mr. and Mrs. Ebanks relating to the Property. Other possibly relevant details could be traversed but none which, in my estimation, could affect the outcome. For instance, there are opposing accounts from witnesses. There were those such as the tour operator Mr. Rollin Jackson and the builder Mr. Harry Chisholm – who would support the Intervener's contention respectively that Mrs. Ebanks did not work at the office and made no contribution of her unpaid labour to the EvCo Tours business, or contribute her efforts to the construction of the matrimonial house. But there

were others who would support Mrs. Ebanks' contention that she did make significant contributions in those areas.

81. Only one independent witness who spoke to these issues was actually called to testify, that was Mr. Duane Tibbetts. He had worked as an EvCo Tours bus driver from 1993-1994. During that time, according to him, Mrs. Ebanks was an everyday and important presence at the EvCo Tours office, carrying out the crucial functions of tour bookings, bus dispatcher and secretary and general responsibility for the record-keeping of the business.

82. The evidence of the witnesses who would deny Mrs. Ebanks' involvement in these areas was presented by way of their affidavits or witness statements. They were not called to testify and so, unlike Mr. Duane Tibbetts, were not tested by way of cross-examination.

83. For that reason and from my own impressions of him as a witness, I preferred the evidence of Mr. Duane Tibbetts on this issue to that of Dellean Ebanks (the youngest sister of Jannitta Ebanks and aunt of Mr. Ebanks and the Intervener), Rollin Jackson or others whose affidavits purport to speak to these issues in favour of the Intervener's case.

84. Some further observations should, however, be made about Dellean Ebanks' affidavit evidence. First, she claims to have been the office manager of EvCo Tours from 1987 to 1991 and up until the time of this trial, to have been the corporate secretary and authorised signatory of EvCo Tours Limited. A main thrust of her affidavit seems to be aimed at establishing in the context of the then current divorce proceedings of Mr. and Mrs. Ebanks, that EvCo Tours had always

been a money-losing venture. So poorly did the business perform, she attests, that both her sister (and the Intervener) had to provide funding from time to time (and she herself by funding in kind through her unpaid work) to stave off Royal Bank of Canada's foreclosure against the buses pledged to that bank. The last time this happened, she affirmed, was in August 2007 when the Intervener "*had to pay CI$6,900 to Royal Bank of Canada to bring the loan up to date and have the buses recovered.*"

85. The necessary observation I make about this, is that no independent evidence was provided to support those or other such putative payments, despite the copious presence in the trial of bank accounts from Royal Bank of Canada in respect of EvCo Tours Limited and Mr. Ebanks' personal accounts with that bank.

86. Dellean Ebanks' affidavit also asserts that her older sister Jannitta provided the funds for the initial purchase of the Property, which she emphasises was purchased from other family members, as if to suggest a preferential price rather than market value. There simply is no basis for that suggestion and, it is worthy of note that she obviously gives only hearsay evidence in this regard, the unreliability of which is revealed by her mention of "*a deposit of $20,000*" (not $15,000) and "*a loan from Barclays of $40,000*" (not $45,000).

87. My conclusion, on the totality of the evidence, is that there had developed as between Mr. and Mrs. Ebanks certain intentions, agreements and arrangements:

(i) that the Property was acquired to be their jointly owned matrimonial property;

(ii) that the initial down payment of $15,000 against the purchase price of $60,000.00 for the land was sourced from Mr. Ebanks' partner drawings which, in turn, had come from the EvCo Tours business and which he was able to accumulate at least in significant part, because Mrs. Ebanks worked without pay for the business or because the income she had been earning from her outside employment, went to meet other needs of the family;

(iii) that Mr. Ebanks' mother's name had been placed on the title only for the purpose of satisfying Barclays Bank's lending requirements;

(iv) that the loan of $45,000.00 taken in 1997 would be and in actuality was redeemed by payments from matrimonial income, paid directly by Mr. Ebanks from EvCo Tours income (or partner drawings derived from that income); while Mrs. Ebanks' income was used for meeting the other expenses and needs of their family (and that this happened between May 1997 to May 2000);

(v) that the then outstanding balance of the bank loan was cleared off in May 2000 by application of some of the $83,000 received from the sale to Brac Reality of Parcel 530 Rem 3;

(vi) that the costs of construction of the house over the course of three years from 1997-2000 and the costs of its finishings beyond the date of first occupation by the family in May 2000, were met from their combined family income; and

(vii) that the beneficial interest in the Property belonged to Mr and Mrs. Ebanks as their matrimonial property at the time of the purported transfer to Jannitta Ebanks, Mr. Ebanks' mother.

88. From all the foregoing I also find that at the time of transfer to Rhonda Lue Ebanks, the Intervener; she was on notice of Mrs. Ebanks' beneficial interest in the Property, and obtained titled purportedly by succession as a mere volunteer, not as a bona fide purchaser for value without notice.

89. It follows, and I so find, that the transfers of title to Jannitta Ebanks and subsequent asserted devolution of title by succession to Yduleen and Rhonda Lue Ebanks as co-administratrix (and later to Rhonda Lue Ebanks alone) were in breach of the agreed common intentions of Mr. and Mrs. Ebanks and intended to defeat her interests as one of the true beneficial owners of the Property.

The legal consequencies

90. Both as a matter of the Registered Land Law[1] and the case law[2], a person who is the sole legal owner of property is *prima facie* the absolute owner and anyone claiming a beneficial interest must prove that the legal owner holds the property upon trust to give effect to that interest.

91. As was settled in *Gissing v Gissing* (as taken from the headnote of the reported judgment)[3]:

> *"...any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not*

[1] ("The RLL"), Section 23.
[2] Pettitt v Pettitt [1970] A.C. 777 H.L. at 813-814 per Lord Upjohn; Gissing v Gissing [1971] A.C. 886 at 904 H.L. per Lord Diplock.
[3] [1971] A.C. 886.

vested, must be based upon the proposition that the person in whom the legal estate is vested holds it as trustee upon trust to give effect to the beneficial interest of the claimant as cestui que trust."

92. As Lord Reid also explained (at p.896 E), this proposition where it arises as between husband and wife -

> *"...depends on the law of trust rather than on the law of contract, so the question is under what circumstances does the husband become a trustee for his wife in the absence of any declaration of trust or agreement on his part. It is not disputed that a man can become a trustee without making a declaration of trust or evincing any intention to become a trustee. The facts may impose on him an implied, constructive or resulting trust."*

93. This is the central proposition upon which Mrs. Ebanks relies. She bases her claim upon the contention which I have found to be true, that she contributed substantially, albeit indirectly, to the payment by Mr. Ebanks of the original deposit of CI$15,000 for the acquisition of the Property and to the subsequent instalments and lump sum payment which enabled him to acquire the legal and unencumbered title to the Property. She contends that those and her further contributions to the finances of the family, were made upon the common intention and understanding between herself and her husband Mr. Ebanks, that the Property was to be their matrimonial home and that she would share a joint interest in it.

94. She invites me by Ms. McClymont, to approach the matter as Lord Morris advised in *Gissing v Gissing* (at 898 C-D):

"When the full facts are discovered the court must say what is their effect in law. The court does not decide how the parties might have ordered their affairs: it only finds how they did. The court cannot devise arrangements which the parties never made."

95. Where, as here, the beneficial interest relied upon was not set out in writing "*it can only take effect as a resulting, implied or constructive trust to which (section 53 of the Law of Property Act, 1925*[4]*) has no application*", declared Lord Diplock (at p905 B-C). He continued in words which have come to be regarded by the subsequent case law (also to be cited below) as all but definitive:

"A resulting, implied or constructive trust - and it is unnecessary for present purposes to distinguish between these three classes of trust[5] *- is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own*

[4] Section 53 provides in relevant part that a declaration of trust respecting any land must be in writing but (subsection 2): "*This section does not affect the creation or operation of resulting, implied or constructive trusts.*" No directly equivalent provisions appear in the local Registered Land Law ("RLL"), but section 23 provides in relevant part that the registration of any person as proprietor with absolute legal title does not relieve the proprietor from any duty or obligation to which he is subject as trustee.

[5] In *Stack v Dowden* (below) Lord Walker noted at para. 28 of his speech, that the distinction can be of some importance in understanding the significance of direct or indirect contributions to the acquisition of the property in question. For reasons to be explained below, this is however, not a decisive distinction in this case.

detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land.

...by these dicta it has been assumed ... that they provide for the spouse in whom the legal estate in the matrimonial home is not vested to do something to facilitate its acquisition, by contributing to the purchase price or to the deposit or the mortgage installments when it is purchased upon mortgage or to make some other material sacrifice by way of contribution to their economy in the general family expenditure. What the court gives effect to is the trust resulting or implied from the common intention expressed in the oral agreement between the spouses that if each acts in the manner provided for in the agreement, the beneficial interests in the matrimonial home shall be held as they have agreed.

....

But parties to a transaction in connection with the acquisition of land may well have formed a common intention that the beneficial interest in the land shall be vested in them jointly without having used express words to communicate this intention to one another; or their recollections of the words used may be imperfect or conflicting by the time any dispute arises. In such a case - a common one where the parties are spouses whose marriage has broken down - it may be possible to infer their common intention from their conduct.

As in so many branches of English law in which legal rights and obligations depend upon the intentions of the parties to a transaction, 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. It is in this sense that in the branch of English law relating to constructive, implied or resulting trusts effect is given to the inferences as to the intentions of parties to a transaction which a reasonable man would draw from their words or conduct and not to any subjective intention or absence of intention which was not made manifest at the time of the transaction itself. It is for the court to determine what those inferences are."

96. This intellectual exercise to be undertaken in divining the intentions of the parties was later circumscribed as being somewhat more refined in *Lloyds Bank Plc v Rossett*[6]. Lord Bridge (in dismissing as untenable the wife's claim to a beneficial interest in the house), emphasised the "*critical distinction*" between a claim of

[6] [1991] 1 A.C. 107.

beneficial interest based upon agreement, arrangement or understanding between the parties and one based upon the conduct of the parties as giving rise to an inference of a constructive trust.

97. He explained (at p132 E-G) that 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*".

98. He continued, at pp132-133:

> *"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. But, as I read the authorities, it is at least extremely doubtful whether anything less will do."*

99. In the present case, Mrs. Ebanks presents her case on both limbs of Lord Bridge's distinction – both evidence of an express agreement and arrangement between Mr. Ebanks and herself to share the beneficial interests, as well as evidence of their conduct in the treatment of the Property as the matrimonial home, coupled with her monetary and other contributions to the family income and so to the indirect repayment of the bank financing.

100. Nonetheless, it should be noted in passing, that the strictures imposed by the second limb of Lord Bridges' distinction – the need for *direct* contributions to the purchase price where reliance is placed upon the conduct of the parties in relation to the Property – has been subsequently doubted by the House of Lords in *Stack v Dowden*[7]. Even while recognising that Lord Bridge (and the House of Lord unanimously) agreed that a "*common intention*" trust could be inferred where there was no evidence of an actual agreement but by reference to the parties' conduct, Lord Walker (at p445 [26]) noted:

> *"Lord Bridge's extreme doubt "whether anything less [(than direct financial contributions)] will do" was certainly consistent with many first-instance and Court of Appeal decisions, but I respectfully doubt whether it took full account of the views (conflicting though they were) expressed in Gissing v Gissing [1971] AC 886 (see especially Lord Reid, at pp 896g-897b, and Lord Diplock, at p 909d-h). It has attracted some trenchant criticism from scholars as potentially productive of injustice: see*

[7] [2007] 2 A.C. 432

Gray & Gray, Elements of Land Law, 4th Ed, paras 10.132-10.137, the last paragraph being headed "A More Optimistic Future". Whether or not Lord Bridge's observation was justified in 1990, in my opinion the law has moved on, and your Lordships should move it a little more in the same direction...

[And continuing at p447 [33] and following more relevant on the subject of financial contribution to a case like the present]:

"In the ordinary domestic case where there are joint legal owners there will be a heavy burden in establishing to the court's satisfaction that an intention to keep a sort of balance-sheet of contributions actually existed, or should be inferred, or imputed to the parties. The presumption will be that equity follows the law. In such cases, the court should not readily embark on the sort of detailed examination of the parties' relationship and finances that was attempted (with limited success) in this case. I agree with Lady Hale that this is, on its facts, an exceptional case.

*In those cases (it is to be hoped, a diminishing number) in which such an examination is required, the court should in my opinion take a broad view of what contributions are to be taken into account. In Gissing v Gissing (*above at 909G*), Lord Diplock referred to an adjustment of expenditure "referable to the acquisition of the house." "Referable" is a word of wide and uncertain meaning....*

Now that almost all houses and flats are bought with mortgage finance, and the average period of ownership of a residence is a great deal shorter than the contractual term of the mortgage secured on it, the process of buying a house does very often continue, in a real sense, throughout the period of its ownership. The law should recognise that by taking a wide view of what is capable of counting as a contribution towards the acquisition of a residence, while remaining sceptical of the value of alleged improvements that are really insignificant, or elaborate arguments (suggestive of creative accounting) as to how the family finances were arranged.

That is in my view the way in which the law can be seen developing through a considerable number of decisions of the Court of Appeal, of which I would single out Grant v Edwards [1986] Ch 638 (before Lloyds Bank plc v Rosset [1991] 1 AC 107) and then Stokes v Anderson [1991] 1 FLR 391, Midland Bank plc v Cooke [1995] 2 All ER 562 and Oxley v Hiscock [2005] Fam 211. In the last-mentioned case Chadwick LJ summarised the law as follows, (at para 69, [speaking to] Lord Bridge's "second category" cases):

> *"But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have-and even in a case where the evidence is that there was no discussion*

on that point-the question still requires an answer. It must now be accepted that (at least in this court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And, in that context, 'the whole course of dealing between them in relation to the property' includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home.""

Lord Walker then continued:

"That summary was directed at cases where there is a single legal owner. In relation to such cases the summary, with its wide reference to "the whole course of dealing between them in relation to the property", is in my opinion a correct statement of the law, subject to the qualifications in paras 61 et seq of Lady Hale's opinion. I would only add that Chadwick LJ did not refer to contributions in kind in the form of manual labour on improvements, possibly because that was not an issue in that case.

For reasons already mentioned, I would include contributions in kind by way of manual labour, provided that they are significant."

101. *Oxley v Hiscock* (above) was a case involving an unmarried couple in the name of one only of whom title to the property had been registered. *Stack v Dowden* also involved an unmarried couple but in both of whose names the title to the property had been registered.

102. Notwithstanding the circumstance of title here not having been taken in the joint names of Mr. and Mrs. Ebanks as man and wife, the principles apply to the present case all the same. The question is whether the beneficial interests are different from the legal entitlements. As Baroness Hale stated at the commencement of her opinion (op cit at [40]):

> *"My Lords, the issue before us is the effect of a conveyance into the joint names of a cohabiting couple, but without an explicit declaration of their respective beneficial interests, of a dwelling house which was to become their home. This is, so far as I am aware, the first time that this issue has come before the House, whether the couple be married or, as in this case, unmarried. The principles of law are the same, whether or not the couple are married, although the inferences to be drawn from their conduct may be different: Bernard v Josephs [1982] Ch 391, 402, per Griffiths LJ."*

103. Baroness Hale, in her discussion of the applicable legal principles, also went on to approve expressly of Lord Justice Chadwick's dictum from *Oxley v Hiscock*

(above) with the qualification at [61] et. seq., by way of emphasis, that the judicial search:

> *"...is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. Second, therefore, it does not enable the court to abandon that search in favour of the result which the court itself considers fair. For the court to impose its own view of what is fair upon the situation in which the parties find themselves would be to return to the days before Pettitt v Pettitt [1970] AC 777 without even the fig leaf of section 17 of the 1882[(Matrimonial Property)] Act.*
>
> *Furthermore, although the parties' intentions may change over the course of time, producing what my noble and learned friend, Lord Hoffmann, referred to in the course of argument as an "ambulatory" constructive trust, at any one time their interests must be the same for all purposes. They cannot at one and the same time intend, for example, a joint tenancy with survivorship should one of them die while they are still together, a tenancy in common in equal shares should they separate on amicable terms after the children have grown up, and a tenancy in common in unequal shares should they separate on acrimonious terms while the children are still with them.*
>
> ....

The questions in a joint names case are not simply "what is the extent of the parties' beneficial interests?" but "did the parties intend their beneficial interests to be different from their legal interests?" and "if they did, in what way and to what extent?" There are differences between sole and joint names cases when trying to divine the common intentions or understanding between the parties. I know of no case in which a sole legal owner (there being no declaration of trust) has been held to hold the property on a beneficial joint tenancy....

....

The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual. Nor may disputes be confined to the parties themselves. People with an interest in the deceased's

estate may well wish to assert that he had a beneficial tenancy in common.

...."

104. Baroness Hale then proceeded to cite many of the variables which will arise for consideration in cases such as the present, in the search for what was the common intention or understanding or arrangement between the parties, concluding at [69] that "*At the end of the day, having taken all* (these) *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.*"

105. The present case is of course, the antithesis of such cases: here, during the marriage of Mr. and Mrs. Ebanks, there was their indisputable intention to have acquired and their actual acquisition of their matrimonial home, all notwithstanding the fact that legal title to the Property was never taken in their joint names and has devolved into the name of neither of them.

106. In my view, in circumstances such as these, even though as Baroness Hale explains, the burden rests upon Mrs. Ebanks to establish her beneficial interest, there can be no presumption of regularity applied so as to increase her burden. Rather, the circumstances here cry out for an explanation: spouses do not usually embark upon the acquisition of a matrimonial home with the intention of the abject exclusion of one and the ultimate exclusion of both, from any interest in it.

107. The circumstances here call for an explanation and the only one forthcoming (as to the state of things at the time of the acquisition of the Property) is that reported by Mrs. Ebanks as having been proffered by Mr. Ebanks, viz: his mother's name

needed to be on the title but only in order to satisfy the bank's requirement for security. According to her testimony which has been implicitly if rather equivocally confirmed by his, there was then talk of putting her name on the title also. According to him, he then offered to put her name on the title but she, incredibly, refused. According to her, his excuse was that it would then be too expensive to alter the title to put her name on it, mentioning a cost of $5,000.

108. But on either account, that was at the outset when he was first imposed upon by her to explain. As at the conclusion of this trial, the only other explanation proffered was that elicited in cross-examination from Mr. Ebanks himself as to the final reason for the transfer into the name of his mother Jannitta Ebanks alone – when he asserted that it was done in order to avoid his creditors. Specifically, he explained, he meant the Royal Bank of Canada, referencing his concern at the time that they might seek to seize his house on account of the loan taken against his buses. It is striking that neither of these two explanations from Mr. Ebanks suggests that Mrs. Ebanks, as between himself and her, was not intended to have a beneficial interest in the Property.

109. With the benefit of the learning derived from the authoritative body of judicial dicta cited above[8], it appears that I must ask and seek the answers to three questions in particular[9]:

[8] Much of which which has already been followed and applied in this jurisdiction in recent cases: see *CIBC Cayman Ltd. v Christiansen and Christiansen* 2008 CILR 103; *Josslyn Hernandez Sainz-Ebanks v James Calbrith Ebanks and Dorothy Cruz*, , Cause No. Fam 2 of 2012 (unreported Judgment of 4th September 2014) and *New England Mortgage Investment Ltd. v Westview Limited and Annalisa Butler* Cause No. 593 of 2009 (Unreported Judgment of 3rd October, 2014).

[9] Specifically, as to which, in *Stack v Dowden* at [66] per Baroness Hale.

(i) Did Mr. and Mrs. Ebanks intend that she should acquire a beneficial interest different from the legal interests evidenced by the registration of title?

(ii) If they did, in what way and to what extent?

(iii) In relying on that common intention, did she act to her detriment?

110. As to the initial question, I repeat my finding that there is simply no credible evidence to refute Mrs. Ebanks' testimony that, as between herself and Mr. Ebanks, there was a common intention understanding and arrangement that she should have a joint beneficial interest in the Property. Despite the dealings with the title in the meantime as between Mr. Ebanks and his mother Jannitta, I find that this common intention and arrangement between Mr. and Mrs. Ebanks continued in effect right up to the point in time in May 2000 when the bank loan was entirely cleared off and up until August 2007 when she was required to leave the matrimonial home.

111. As in so many of the cases that have come before the courts[10], excuses for not putting title into joint names despite such common intentions, often reveal the truth.

112. In *Lewin on Trusts,* the 18th Ed., the editors upon analyzing these cases, express the view (at para. 9-68) that:

> *"Where at the time of the transfer of title the legal owner puts forward some excuse for the property not being placed in the joint names, especially if the claimant reposes trust in the legal owner,*

[10] Eves v Eves [1995] 1 W.L.R. 1338: CA (that the claimant was under age); Grant v Edwards [1986] Ch. 638 CA (alleged matrimonial difficulties); Rowe v Prance [1999] 2 FLR 787 (title to a boat; that the claimant, a woman, had no Ocean Master's Certificate).

then the Court may take that fact as direct evidence of a common intention that the claimant is to have a beneficial interest, for if there was no such intention, why should the legal owner have found it necessary to put forward an excuse?"

113. This passage is a pertinent reflection upon the circumstances as they prevailed between Mr. and Mrs. Ebanks at the time of the acquisition of the Property when title was taken, unbeknown to her, in the joint names of Mr. Ebanks and his mother and when Mrs. Ebanks upon discovering this, was at first given the excuse that this was necessary to secure the bank loan – an excuse which she accepted at the time because of her trust reposed in Mr. Ebanks.

114. As to the second question; as the case law examined above explains, to establish a basis for a constructive trust, it is not necessary for the party asserting the beneficial interest to prove either an actual agreement or - when relying upon the entire course of conduct in relation to the Property - a specific account of financial contributions. That party must show a common intention for the creation of a beneficial interest which can be expressed or imputed as derived from the whole course of the conduct of the parties in relation to the property in dispute. The relevant intention of each party is the intention reasonably understood by the party asserting the interest as manifest by the whole course of conduct. Thus, equity will not allow the party denying the beneficial interest to rely on deceitful conduct by suggesting that his intentions were other than those assured by him or those reasonably to have been discerned from his course of conduct. Equity acts upon

the conscience of the legal owner to prevent him from acting in an unconscionable manner to defeat the common intention.

115. In this case not only, as I have found, were expressed assurances given by Mr. Ebanks to Mrs. Ebanks, their entire course of conduct together in relation to the Property was consistent only with those expressed assurances. The Property was not only agreed between them to be the matrimonial home and property, they also treated it, in every respect, as such.

116. Simply by way of emphasis and in passing, I also note that the entire course of conduct between Mr. and Mrs. Ebanks in relation to the Property bears no comparison to that of the parties in *Morris v Morris*[11] cited by Mr. Akiwumi here. In that case Sir Peter Gibson on behalf of the Court of Appeal, in rejecting the claim for a common intention constructive trust found that:

> *"The evidence in the present case seems to me, with respect to the judge, to be wholly inadequate to establish any such common intention.... One looks in vain in the claimant's evidence, whether by way of her witness statements or the evidence which she gave orally, to find a clear statement that she herself had the belief or expectation that she was entitled to an interest in the land itself...."*

117. That is certainly not this case. Here, as I have found and as Mrs. Ebanks testified, there was a common intention between herself and Mr. Ebanks and express assurances given by him, that despite legal title being held jointly in his and his mother's name, the beneficial interests remained in them as husband and wife.

[11] [2008] EWCA Civ. 257.

118. And, given all the circumstances – including her substantial financial and other contributions in kind – I find that the common intention was that the beneficial interests would remain in them in equal shares.

119. Thirdly, I find that Mrs. Ebanks acted upon the common intention, assurances and arrangements to her detriment. I do not consider that I need specify the ways in which she acted to her detriment. As Sir Nicolas Browne-Wilkinson V.C. (as he then was) declared in *Grant v Edwards* (above, at 657):

> "*...once it has been shown that there was a common intention that the claimant should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties is, in my judgment, sufficient detriment to qualify. The acts do not have to be inherently referable to the house*".

120. That being the principle, I need only cite by way of significant example, the fact that Mrs. Ebanks, relying upon the common intention agreement and arrangements, contributed her own income to the acquisition of the Property and to the financial well-being of her family, rather than having sought to acquire a different home for herself.

121. With all the foregoing in mind, I conclude that the Property was impressed with a common intention constructive trust in favour of Mrs. Ebanks when title was taken and registered in the joint names of Mr. Ebanks and his mother Jannitta Ebanks and when title was subsequently transferred into Jannitta Ebanks' sole name for no consideration but for natural love and affection and for reasons to be expanded upon below, with notice of Mrs. Ebanks' beneficial interest.

122. It follows, and I so find, further to my findings at paragraph 87 (vii) (above), that the transfer of Mrs. Ebanks' beneficial interest to Jannitta Ebanks was in breach of that constructive trust and survived the transfer to Jannitta Ebanks.

123. It also follows, further to my findings in general at paragraph 87 (above) – and as further case law and the RLL (to be cited below) establish – that Mrs. Ebanks' beneficial interests survived the subsequent purported devolution of title to the Intervener who succeeded to title as a mere volunteer, on notice of her beneficial interest and who therefore was not a bona fide purchaser for value without notice.

124. The relevant principles in this regard are stated by Lewin on Trusts (op. cit para 41-114):

> *"If trust property is wrongfully transferred to a purchaser taking with notice of the trust then, whether such notice is actual, purported or constructive and whether or not he gave full value, and whether or not he acquired the legal estate, he is bound to the same extent and in the same manner as the person from whom he bought*[12]*. The rule applies not only to trust property so called but also to purchasers with notice of any equitable incumbrance e.g. a covenant or agreement affecting the property or a lien for unpaid purchase money. But a bona fide purchaser for value of a legal estate without notice of the trust defeats the equitable interest of the beneficiaries, and so enables the purchaser and his successors*

[12] Citing among many other cases, *In Re Diplock* [1948] Ch. 465, 523 C.A. (Affid. Sub. Nom.) *Ministry of Health v Simpson* [1991] A.C. 521 HL

in title to defend both proprietary and personal claims in relation to property transferred in breach of trust....

It is to be noted that purchase without notice is a defence, not an ingredient of liability which needs to be established by a claimant who seeks to establish a continuing equitable interest in the property, and it is for the purchaser to discharge the burden of proving both that he gave valuable consideration and that he had no notice[13]*....*

Consideration includes discharge of an existing debt[14]*....*

The requirement of consideration rules out the defence for volunteers[15]*, and an obligation to apply the property received by the volunteer in a particular way does not convert him into a purchaser. Volunteers may however benefit from the defence if they derive title from a purchaser who satisfied the requirements of the defence...."*

125. The principles are also neatly captured in Megarry and Wade, The Law of Real Property, 8th Ed. At Chp. 5-011 in these terms:

"*...a person who takes the land without giving value in exchange (such as an heir, executor or donee) must take it with all its burdens, equitable as well as legal: trusts bind volunteers. Secondly, even a person who has given value will be bound if before he obtained the land he knew of the trust: trusts bind all*

[13] Citing *Barclays Bank plc v Boulter* [1998] 1 W.L.R. 1 C.A.; [1999] 1 W.L.R. 1919 at 1924 G-H. HL.
[14] Citing inter alia *Taylor v Blakelock* (1886) 32 Ch.D. 560, CA.
[15] Re *Diplock* (above).

who take with notice. Both these principles are summed up in the cardinal maxim in which is expressed the true difference between legal and equitable rights:

> *"Legal rights are good against all the world; equitable rights are good against all persons except a bona fide purchaser of a legal estate for value without notice, and those claiming under such a purchaser" (citing Maitland, Equity pp114, 115).*
>
> *Such a purchaser is often referred to somewhat inappropriately as "equity's darling" (again, citing Maitland op. cit)."*

126. These principles appear to have been most recently reaffirmed by the English Court of Appeal in *Independent Trustee Serves Ltd. V GP Noble Trustees Ltd. and Susan Morris* [2012] 3 WLR 597[16] where it was stated (per Lloyd and Tomlinson LJJ at [70] and [106]), that a transferee of the legal title to property under a disposition made in breach of trust or his successor in title, does not have the beneficial title to the property, which remains held on the original trusts, unless either the transferee, or his successor in title, was a bona fide purchaser for value without notice.

127. Neither the Intervener nor her mother Jannitta Ebanks qualified as such a purchaser here. The compelling evidence of Mrs. Ebanks which I accept is that they both would have been on notice of her interests. She explained that they

[16] Appeal to the Supreme Court of Appeal to the Supreme Court appears to be still pending: Morris (Appellant) v Independent Trustee Services Limited (Respondent) Case 1D:UKSC 2012/0081: http://supremecourt.uk/cases/case 2012 0081.html

both often visited the Property after it became occupied as her matrimonial home. This continued for some six or seven years until the breakdown of her marriage in 2007. On account of such regular interactions with her and Mr. Ebanks, Jannitta Ebanks and the Intervener, she said, would have been well aware of her contributions to the acquisition and maintenance of the Property, both in terms of her employment income and her efforts as mother and wife. I accept this evidence and so Jannitta Ebanks and the Intervener must be regarded as having taken title to the Property with imputed or constructive, if not actual notice of Mrs. Ebanks' beneficial interest in the property.

128. The Intervener can assert no better title than her mother Jannitta Ebanks could have acquired. In fact, in her first affidavit filed in these proceedings, then seeking to resist Mrs. Ebanks' application to bring her into these proceedings, she professed only minimal knowledge of the circumstances under which the interests in the Property had devolved. This is what she said at paragraphs 6, 7 and 9:

> "6. *As far as I am aware my brother the Respondent and the Petitioner together with their family first moved into this house sometime after March 2001 as that was the time that a certificate of occupancy was issued for the home. The Petitioner and her family did not live in the home throughout the marriage as alleged. I am also aware that the Petitioner did not continue to reside there continuously from that time since she and her children lived in Costa Rica during the period January to December 2003.*

[(I interject here to note that this account of an alleged break in occupation would ignore the marital arrangement acknowledged by Mr. Ebanks, that pursuant to which Mrs. Ebanks spent time in Costa Rica with their children.)]

> 7. *...after the death of my mother the property was transferred to me by the administrators of the property. I had had primary care of my parents in the last days of their lives and I understand from the administrators that it was agreed by the other beneficiaries that in recognition of my efforts to care for our parents that the inherited property would be transferred to me. (Emphasis added)*
>
> ...
>
> 9. *I have no other information pertaining to any other circumstances in which the parties to this matter came to remain in the inherited property and their involvement and/or contributions to the purchase and development of the said inherited property."*

129. As it subsequently came to light that the Intervener was herself one of "*the administrators*" referred to in paragraph 7 of her affidavit as having taken the decision that she should take the entire interest in the Property, her account seems ambivalent at best. This is a fair observation also in respect of what she states in paragraph 9, when seeking, as she did throughout the proceedings, to deny of her own knowledge, that Mr. Ebanks made a substantial contribution.

The Intervener's arguments

130. Despite her ambivalence in these passages from her first affidavit, it appears nonetheless to be the Intervener's view that Mrs. Ebanks needs to establish that the Intervener, as Jannitta Ebanks' successor in title, was personally and directly aware of Mrs. Ebanks prior equitable interest in the Property when she succeeded to title.

131. This was certainly the argument presented by Mr. Akiwumi and, for convenience, I will set out his written submissions on this point here:

> *"The House of Lords decision of Westdeutsche Landesbank v Islington LBC*[17] *is the leading authority on the circumstances in which a Constructive Trust will be imposed by the Court. Lord Browne-Wilkinson stated four principles in which a trust will be held to operate. The first two are repeated below; the last two being irrelevant for the Intervener's purposes. At page 705 it is stated that:*
>
> *(i) Equity operates on the conscience of the owner of the legal interest. In the case of a trust, the conscience of the legal owner requires him to carry out the purposes for which the property was vested in him (express or implied trust) or which the law imposes on him by reason of his unconscionable conduct (constructive trusts).*

[17] [1996] AC 669

(ii) *Since the equitable jurisdiction to enforce trusts depends upon the conscience of the holder of the legal interest being affected, he cannot be a trustee of the property if and so long as he is ignorant of the facts alleged to affect his conscience, that is: until he is aware that he is intended to hold the property for the benefit of others in the case of an express or implied trust, or, in the case of a constructive trust, of the factors which are alleged to affect his conscience."*

132. These passages from Lord Browne-Wilkinson's judgment appear in the context of his general summary of relevant principles of trust law. He was there deciding the specific question whether the doctrine of resulting trusts should be extended to a situation where a commercial lending transaction had failed for being *ultra vires*, because the borrower (the Islington Council) had no authority to enter into the transaction. Upon deciding that the doctrine should not be extended in such circumstances and thereby denying the plaintiff bank the right to claim a propriety interest in the money advanced to the Council, the issue then became whether there was another restitutionary remedy available to the bank in quasi-contract for moneys had and received and whether compound interest would be recoverable, calculated from the date the moneys were paid to the Council.

133. Those being the circumstances, it will be readily apparent that the present is a very different case than that which engaged the House of Lords in *Westdeutsche*

Bank and so Lord Browne-Wilkinson's categorization of the relevant principles of trust law, while being of general applicability here, were not addressed to circumstances like the present.

134. More specifically, the House of Lord was not concerned with the issue whether legal title to a matrimonial property having been transferred by her husband to someone else, it could nonetheless be impressed with a resulting or constructive trust of the wife's beneficial interest.

135. There is simply nothing in Lord Browne-Wilkinson's categorization of the relevant principles of equity in *Westdeutsche Bank*, that runs contrary to the principles from *Gissing v Gissing*, *Oxley v Hiscock, Stack v Dowden* or the other cases cited above on this issue.

136. Indeed to the contrary, in *Westdeutche Bank*, Lord Browne-Wilkinson specifically recognised at [p708A], that the circumstances in which *"a resulting trust arises"* included where A and B pay for the purchase of a property and the property is vested in their joint names - there is a presumption that A did not intend to make a gift to B: the property is held in shares proportionate to their contributions.

137. While that dictum is not on all fours with the situation here, Lord Browne-Wilkinson was there speaking illustratively. His dictum resonates in support of the views I express at paragraph 105 (above) and recognises that there is an enquiry to be undertaken as to whether a trust exists, where the legal title vested in someone else, does not reflect the apparent beneficial interests of parties who provided the means for acquisition of a property.

138. Moreover, and to the extent that Mr. Akiwumi's argument here seeks to confine the basis of Mrs. Ebanks' claim to a resulting trust and then for the purpose only of arguing that a resulting trust could not arise, I am satisfied that he argues for form over substance. As Lord Diplock declared in *Gissing v Gissing* (above) - and see paragraph 94 above of this Judgment) - it is unnecessary in circumstances where an equitable interest in property is claimed as arising from the common intention and course of conduct between the parties, to distinguish between a resulting, implied or constructive trust.

139. Here Mrs. Ebanks contends and I accept that her equitable interests in the Property accrued from the outset of its acquisition by the use of matrimonial resources ($15,000 deposit) and bank financing ($45,000.00) for which she assumed the joint marital responsibility with Mr. Ebanks to repay and did in actuality repay from the outset.

140. In these circumstances, more to the point here I think, is the fourth limb of Lord Browne-Wilkinson's categorization from *Westdeutche* which Mr. Akiwumi's submissions would overlook: (P.705, Letter F):

> "*Once a trust is established, as from the date of its establishment the beneficiary has, in equity, a proprietary interest in the trust property, which proprietary interest will be enforceable in equity against any subsequent holder of the property (whether the original property or substituted property into which it can be traced) other than a purchaser for value of the legal interest without notice.*"

141. It is clear, and I so conclude – following *Independent Trustee Services* as well as *Westdeutche Bank* (in its general propositions) and the other cases cited by the textbooks – that the beneficial interests of Mrs. Ebanks in the Property survived both the purported transfers of legal title to Jannitta Ebanks and the subsequent purported transfer by succession to the Intervener.

Mr. Ebanks' beneficial interest

142. While I am not called upon to decide this issue here, I feel obliged to express my rejection of the notion also implicitly relied upon by the Intervener, that Mr. Ebanks had intended, when he transferred legal title into his mother's name, also to convey his own beneficial interests in the Property to her, once and for all.

143. I feel obliged to reject that notion because it was contrary to the very evidence which he finally gave on oath in these proceedings, as to the merely expedient basis upon which he was party to that transfer on 7th March 2000.

144. I make these observations here because they could go to the issue whether Mr. Ebanks' estate might have a claim in respect of a beneficial interest of his in the Property such as might have survived the transfer of legal title. But that inquiry is for another day, not coming now within the purview of these proceedings. I simply wish to emphasize here that I do not in anywise accept the Intervener's assertion of legal title as overriding any prior beneficial interests that had accrued, not only to Mrs. Ebanks but also to Mr. Ebanks.

145. My decision here will impact upon the legal title now only insofar as it must be rectified to recognise the beneficial interest of Mrs. Ebanks herself, acquired in

the Property from the outset of its acquisition and which continued to develop while the marriage subsisted and while Mr. Ebanks was alive.

146. It is in that regard that I declare that she has been and remains the beneficial and equitable owner as to one-half of the Property and that the Intervener is her constructive trustee in respect of that interest.

147. Accordingly, in keeping with section 140(1) of the RLL, I also order that the register of title for the Property shall be rectified to show that the Intervener holds title as trustee for Mrs. Ebanks as the beneficial owner as to one-half of the interests in the Property.

148. I will hear submissions as to what further orders should now be made for the disposition of the Property.

Costs

Both Mr. and Mrs. Ebanks had been legally aided throughout these proceedings. The costs to the public purse have been significant. The Legal Aid Fund may well be entitled to recover at least some of those costs from the Intervener as the result of her stance taken in these proceedings and I will hear submissions in this regard also.

GRAND COURT CAYMAN ISLANDS

Hon. Anthony Smellie
Chief Justice

December 10th 2014