

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV 2015–01986

BETWEEN

Rudolph Mc Clatchie otherwise Rudolph Mc Clatchie by his lawful attorney Kimberly Anna
Wyinefred Mc Clatchie otherwise Kimberly Mc Clatchie by virtue of Power of Attorney
Registered as DE201401908984

Claimant

AND

Dean Benjamin

1st Defendant

Keron Benjamin

2nd Defendant

Jennifer Benjamin-Antoine

(Administratrix Ad Litem for the Estate of Garnet Benjamin)

3rd Defendant

Before the Hon. Madam Justice Eleanor J. Donaldson-Honeywell

Appearances:

Ms. Earla Nyack, Attorney-at-Law for the Claimant

Ms. Beverley Z. Samuel, Attorney-at-Law for the Defendants

Delivered on April 5, 2016

Judgment

Introduction and Background Facts:

1. The Claimant and the Defendant's father, Garnet Benjamin, became acquaintances more than thirty years ago when they worked together on the docks at the Port-of-Spain, Port Authority. At some time in the 1980s an opportunity arose for the purchase of one of the homes being constructed by Home Construction Limited ["HCL"] in what was then the new housing development in Trincity.
2. On December 4, 1984, the Claimant and his co-worker, Garnet Benjamin, purchased the property at No 3, 6th Street East, Montague Avenue in Trincity ["the property"] together. The property was conveyed to them as Joint Tenants after they had, by Deed dated 16th October 1984, jointly obtained mortgage loan financing from Trinidad and Tobago Mortgage Finance Limited ["TTMF"]. Garnet Benjamin ["the Deceased"] died on February 7, 2014.
3. The Claimant who has lived in Brooklyn, New York since the early 1990s and never resided at the property, seeks by this action to enforce his rights as sole surviving joint tenant to sole ownership of it based on the principle of *jus accrescendi*. He seeks in his Fixed Date Claim filed on June 12, 2015, a declaration of his ownership and an order to recover possession of the property from the Deceased's children, the first and second defendants, who currently reside there.
4. The Third Defendant is the daughter of the Deceased and she represents his Estate as Administratrix ad Litem in this matter. Her contention is that the Claimant is not entitled to recover possession of the property because of the un-contradicted fact that her Deceased father paid the deposit in 1984 and all mortgage re-payments of One Thousand, Six Hundred and Four Dollars and Thirty Cents (\$1,604.30) per month for the home from 1984 until the last payment in July, 2006. The Mortgage was released by Deed of Discharge executed by TTMF on July 17, 2008. Accordingly, based *inter alia* on these payments, it is the case for the Defence that the interest held by the Claimant in the property is subject to a resulting trust. Therefore, it is contended that the beneficial interest in the property in its entirety belongs to the Estate of the Deceased.
5. Furthermore, the Third Defendant claims to have found a document in her father's briefcase after he died. She asks the Court to accept the document, an Agreement her father told her he had made with the Claimant that the Claimant would transfer to the Deceased his share of the property for his sole use and benefit. The curiously worded

document states that the proposed transfer was to have been a temporary arrangement as of June 12, 1984 pending “*the proper transfer of mortgage deed as soon as possible.*” The document, a three paragraph photocopy, states further in the alleged words of the Claimant “*should anything happen to me before I can execute a proper deed of transfer, then this document must be considered as a proper legal document of agreement, entered into by me the undersigned Rudolph Mc Clatchie voluntarily.*”

6. The proposed transfer of the mortgage alleged in this document to have been contemplated by the parties never took place. As aforementioned, the Deceased paid the full mortgage without having it transferred to his name. When the mortgage was discharged he and his family continued to reside in the premises and there was no action taken by him to have the property transferred to his name in the six years that elapsed from then to his passing in 2014.
7. The photocopy of this alleged agreement produced by the Defendants is dated June 12, 1984, some six months before the property was conveyed to the Claimant and the Deceased. This alleged Agreement is relied on by the Defence as an additional basis for the contention that although the Claimant would be the co-owner as a joint tenant of the property in law; in equity the parties were tenants in common from inception and the Claimant’s interest in the property was always to be held on trust for the Deceased.
8. Finally, the Defence contends that the Deceased carried out extensive renovations and repairs on the property based on which his estate remains entitled under a constructive trust to a beneficial interest in the property. On all these grounds the Defendants filed a counterclaim on September 29, 2015 seeking *inter alia* a declaration that the Claimant holds the property on a Resulting and/or Constructive Trust for the Estate of the Deceased.
9. Having been apprised of the Defendant’s contentions with regard to these grounds for the Deceased’s estate’s entitlement to a beneficial interest in the property, the Claimant’s filed Reply included a denial of any knowledge of the alleged Agreement. The Claimant’s response with regard to the payments of the mortgage by the Deceased was that that was done based on an arrangement whereby, since he would be residing in the premises with his family, he would pay the mortgage instead of paying a rent to the Claimant.
10. The Claimant on the other hand had no need to reside in the premises since at the time of the purchase he and his family lived with his common-law spouse who was renting

a house in Maloney. Thereafter he migrated to the United States of America. The Claimant says he was induced into this arrangement by the Deceased who failed to disclose his intention to rely on his payments on the mortgage to deny him of his entitlement to the property.

11. As it relates to the renovations done on the property there is no dispute that this was done without consultation with or interference by the Claimant. The Claimant contends further that he resided abroad when much of this work was done so he would have had no knowledge of it. In all the circumstances the Claimant maintains that he is entitled to sole ownership of the property as the sole surviving Joint Tenant.
12. It is to be highlighted that the very concept of survivorship contains an inherent unfairness and the Defendants' submission that the Claimant waited until the Deceased died in an attempt to "wrest the Property from the beneficiaries of his estate" is in reality simply enforcement of a legal right afforded to the Claimant by the survivorship principle. It remains, however, for the court to determine the extent to which principles of equity are applicable in the instant matter to temper the potential injustice in a Joint Tenancy.

The Issues:

13. The parties identified issues to be determined herein and filed same for the Court's consideration. During a Case Management Conference on January 13, 2016 directions were given that the issues to be determined herein were whether:
 - a. The Deceased induced the Claimant to agree to a joint ownership in the manner alleged in the Reply.
 - b. The Claimant or the Defendants are entitled to possession of the property.
 - c. The Claimant holds the property on a resulting and/or constructive trust for the Defendants.
 - d. The joint tenancy was severed or the rule of *jus accrescendi* applies.
 - e. There did in fact exist a document dated June 17, 1984 which was executed by the Claimant and if so what effect the document has had on the joint tenancy.
14. Having considered the evidence and legal submissions after the Trial the issues can be more precisely considered as follows:
 - a. Whether there existed a written agreement between the Deceased and the Claimant that the Claimant would transfer the property to the Deceased's name; and

- b. Whether the Claimant held/holds the property on trust for the Deceased/ Estate of the Deceased, due to the alleged Agreement, the Deceased's sole contributions to the mortgage instead of rent and/or his renovations to the property.
- c. Whether a resulting trust operates merely to defeat the presumption of equal shares within a joint tenancy or whether it can operate to preclude the principle of survivorship upon the death of one joint tenant.
- d. If a resulting trust is found to exist in the present case, whether there should be some set-off made for reasonable occupation rent for the occupation of the property by the Defendant.

The Evidence:

- 15. The Claimant's case was supported in evidence by his own sworn testimony and that of his daughter, Kimberly Anna Wyinefred Mc Clatchie who he had granted a Power of Attorney to pursue the instant claim since he resides in the United States of America.
- 16. The Claimant's testimony in chief as contained in his written witness statement was that he had applied to HCL for a Trincity house and was successful in 1984. The Deceased heard about it and inquired whether the Claimant could rent it to him. The Claimant did not intend to live in the property immediately as he resided elsewhere. Eventually, HCL allowed the Deceased to be treated as a co-owner based on the fiction that he was the Claimant's brother.
- 17. The Claimant said he felt this would facilitate the rental arrangements since the Deceased would pay "rental money" directly towards the mortgage while he and his family resided at the property. Similarly, because the Deceased would be residing in the property he would be responsible for all utility bill payments. According to the Claimant all arrangements he had with the Deceased were oral for a "mutually beneficial transaction". He denied he ever signed a written agreement with him.
- 18. The Claimant explained in his witness statement that during the time that the Deceased was responsible for the mortgage and utility payments he occasionally checked to make sure that they were up to date. When they were in arrears he tried to send a message to the Deceased but was unsuccessful. He also asked his daughter to carry a copy of an overdue WASA bill to the Deceased and ask him to make contact with him by telephone. No contact was made.

19. Instead according to the Claimant's daughter she was verbally abused by the Deceased who asked her why the Claimant's name was on the bill when the property belonged to him. The overdue bill was later paid by the Deceased. The Claimant then realised that the Deceased was trying to in his words "*get my property*". Thereafter, on finding out about his death in February, 2014 the Claimant started to take steps to get back the property.
20. Under cross-examination the Claimant was forced to admit that the reason for his extended residence away from the property was because he was an illegal immigrant and may not have been able to return to the United States of America if he travelled back to Trinidad and Tobago. His resident status was regularised in 2015 hence he was able to return to Trinidad and Tobago. He admitted too that although he claimed there was a rental arrangement with the Deceased he did not engage in some of the customary activities of a landlord such as attending to repairs or visiting to examine the premises.
21. The sole witness for the Defence was the Third Defendant, Jennifer Benjamin-Antoine. A Witness Statement was filed by this Defendant on December 4, 2015 however it comprised largely of hearsay testimony. Although there was no objection to this hearsay evidence by Counsel for the Claimant it is my finding that little weight could be attached to much of the Third Defendant's evidence about how her father and the Claimant came to buy the property and the terms of any arrangements they had. She was not privy to their discussions and only heard about the transaction from her parents.
22. Under cross-examination it was put to her that the alleged June 12, 1984 Agreement attached to her statement was a photocopy but she claimed that she had given the original to her Attorney. Counsel for the Defendants interposed during the cross-examination to deny, however, that she had received anything other than a photocopy of the alleged Agreement from the Defendants. She also stated that despite the Claimant's Attorney having filed on December 4, 2015 a Notice pursuant to Part 28.18 of the Civil Proceedings Rules 1998 ["CPR"] that the said Agreement be proved, she never received the Notice.
23. Questions put to the Third Defendant as to whether the alleged Agreement could have been a doctored photocopy were disallowed following an objection by Counsel for the Defendants since there was no direct allegation of fraud in the Claimant's Reply.

Law and Analysis:

i. The Alleged Written Agreement:

24. On the issue of the June, 1984 agreement that the Defendants claim existed between the Deceased and the Claimant, there is insufficient evidence to conclusively prove the authenticity of the written copy produced to the Court. Although the document annexed to the Defendants' defence appears to be a signed agreement by the Claimant to transfer his share in the property to the Deceased, the Claimant himself who was a sworn witness, has stated that he never signed such a document and did not know the alleged witness.
25. The Claimant challenged the authenticity of the document but neither the Claimant nor Defendants brought expert testimony to validate or invalidate the document. It remains for the Court to determine the weight to be attached to the Defendant's hearsay testimony as to the existence of the Agreement. This was not the "*best evidence*" in the traditional sense since it was supported solely by the secondary evidence of a photocopy.
26. According to the UK Court of Appeal decision of ***Masquerade Music Ltd and Others v Springsteen***¹:

"...the time has now come when it can be said with confidence that the best evidence rule, long on its deathbed, has finally expired. In every case where a party seeks to adduce secondary evidence of the contents of a document, it is a matter for the court to decide, in the light of all the circumstances of the case, what (if any) weight to attach to that evidence. Where the party seeking to adduce the secondary evidence could readily produce the document, it may be expected that (absent some special circumstances) the court will decline to admit the secondary evidence on the ground that it is worthless. At the other extreme, where the party seeking to adduce the secondary evidence genuinely cannot produce the document, it may be expected that (absent some special circumstances) the court will admit the secondary evidence and attach such weight to it as it considers appropriate in all the circumstances. In cases

¹ [2001] EWCA Civ 563, [85]

falling between those two extremes, it is for the court to make a judgment as to whether in all the circumstances any weight should be attached to the secondary evidence.”

27. Under cross-examination, the explanation given by the Defendants for non-production of the original was unclear. When questioned where the original was the Third Defendant stated that she had given it to her Attorney. This was denied by her Attorney forthwith. The Third Defendant subsequently changed her position under cross-examination saying “*No the original I have is the same copy like this.*”

28. These circumstances cast doubt on the Third Defendant’s explanation concerning the alleged Agreement. Given:

- The implausible explanation for failure to produce an original;
- The fact that the Defendants proved only second hand hearsay knowledge of the alleged Agreement; and
- That the testimony of the Claimant disputing the document was unshaken under cross-examination,

it is my determination that no evidential weight can be attached to the copy. There is therefore no evidence of the alleged June, 1984 written Agreement before the Court. That document is not taken into account as evidence that the Claimant agreed from inception to transfer his ownership to the Deceased thereby severing in equity the Joint Tenancy in the property.

ii. The Alleged Resulting/Constructive Trusts:

29. In addressing the issue as to whether the Claimant always held the property on Trust for the Deceased and now holds it for his Estate, it is important to underscore that on creation of a co-ownership in property there can be two separate but co-existing types of interest created. These are the legal estate and the equitable estate.

30. **Megarry and Wade, The Law of Real Property, Eight Edition** explains at para 13-014 that “*A and B may be legal joint tenants but equitable tenants in common; that is to say A and B hold the legal estate jointly on trust for themselves as tenants in common.....The effect of A’s death on the legal joint tenancy is that B is solely entitled. However, A’s equitable interest (his undivided share) passes under his will or intestacy. The result is that B holds the legal estate on trust for himself as to his share, and for A’s personal representatives as to A’s share.*” [Emphasis added.]

31. **Megarry and Wade** states at 13-021 that:

“Unlike the common law, equity did not favour joint tenancy. .. ‘and favours tenancies in common’. This maxim meant that a tenancy in common would exist in equity not only in those cases where it would have existed at law, but also in certain other cases where an intention to create a tenancy in common ought to be presumed.....In all of which persons who were joint tenants at law were compelled by equity to hold the legal estate upon trust for themselves as equitable tenants in common..... A tenancy in common which arises in one of those ways is classified as a resulting or constructive trust.”

32. There was agreement between the parties on the law as to the operation of a Resulting Trust to create an equitable Tenancy in Common where the parties are at law Joint Tenants. The ordinary course of events upon the death of a joint tenant is that the principle of survivorship or *jus acresendi* takes effect:

“The death of one joint tenant creates no vacancy in the seisin or possession. His interest is extinguished. If there were only two joint tenants, the survivor is now seised or possessed of the whole.”²

33. The **Real Property Act, Chap. 56:02** provides at S. 76 that:

“On the death of a person registered as joint proprietor with another, or when the life estate in respect of which any certificate of title has been issued has determined, and the estate next registered in remainder or reversion has become vested in possession, or when the person to whom such certificate of title has been issued has become entitled to the said land for an estate in fee simple in possession, the Registrar General may...register such person as proprietor of such estate or interest.”

34. In the present case, the Defendants claimed that the circumstances give rise to the presumption of either a resulting or constructive trust. However, Counsel for the Defendants’ closing submission focused solely on the elements of a resulting trust. Furthermore, it is my finding of fact that a constructive trust based on the renovations done by the Deceased does not arise in this case since the work was not done with the Claimant’s approval or knowledge. The renovations were done for the Deceased’s own comfort as a resident at the premises.

² Halsbury’s Laws of England Real Property and Registration (Vol 87 (2012) 5th Ed.) [202]

35. As it relates to the resulting trust, the Defendants' closing submission underscores that if persons purchase property and contribute to the price equally they are presumed in equity to be Joint Tenants. If their contributions are unequal, the purchasers are presumed to take beneficially as tenants in common in shares proportionate to the sums advanced. The Defendant cites the text **Equity and Trusts 6th Edition at page 455** where the Author opined:

"Purchase price resulting trusts arise so as to recognize that a person who has contributed to the purchase price of property acquires an equitable interest in that property in proportion to the size of their contribution. That equitable interest is held on resulting trust for the contributor."

36. The presumption of a resulting trust can however be rebutted either by the counter-presumption of advancement or by direct evidence of the other parties intention to make an outright transfer.³ It must therefore be determined whether the elements of a resulting trust have been made out in the present circumstance and whether it has been rebutted.

37. In closing submissions Counsel for the Claimant usefully analysed this question as follows:

"The basis for this claim was firstly the Deceased's intention that he was to be the sole owner of the property, secondly the document and thirdly all the acts of the Deceased in relation to the property, in particular the sole contribution to the purchase price and the unilateral renovations to the property (hereinafter referred to as "the Deceased's acts")."

If the Court accepts that the document did in fact exist then it must hold that there was an express trust in favour of the Deceased. However, if the court accepts that the document was not proven to exist then it has to consider the Deceased's intention and acts and whether they cause a [resulting] trust to be implied."

38. As aforementioned, I have made a finding of fact that the purported evidence of a document representing an Agreement made in June, 1984 is of no evidential value. There is no first hand evidence of the Deceased's intentions. Accordingly, the question whether there was a resulting trust turns on the Deceased's proven actions

³ **The Venture**, C.A. 1908, March 5,17

and in particular his payments of the mortgage. Again quoting from Counsel for the Claimant:

“Because the Deceased provided ALL of the deposit for the property and paid the entire mortgage in a situation where he did not share any close relationship to the Claimant, the law presumes a resulting trust in his favour. However, this is a rebuttable presumption.

As such, the starting point in this case is that the Claimant holds the property under a resulting trust for the Deceased’s estate. But this can be rebutted and the burden lays on the Claimant to rebut it.

The Claimant’s rebuttal is the [alleged rental] arrangement and so the Court must determine whether there was the arrangement. If the arrangement existed, then there is no resulting trust.” [Highlighted words added]

39. It was stated however, in the High Court of Australia decision of *Calverley v Green*⁴ that:

“the presumption of a resulting trust, may be rebutted by evidence of the actual intention of the purchaser at the time of the purchase: see Charles Marshall Pty Ltd v Grimsley (1956) 95 CLR 353 at 364–5. Where one person alone has provided the purchase money it is his or her intention alone that has to be ascertained.”

40. In this matter the Deceased provided all the purchase money and there is no evidence of an intention on his part to convey a sole beneficial interest unto the Claimant. Further, the presumption of advancement does not arise in this case as such a presumption, which means that a gift was intended, is limited to transfers made in matrimonial/co-habitational circumstances or to immediate family members.
41. Furthermore, even if the Claimant’s intention were a relevant factor it is my finding from the evidence that there was no express oral arrangement between him and the Deceased that the mortgage payments would be the mechanism to pay rent in a landlord and tenant arrangement. I make this finding because the Claimant’s testimony on the arrangement was not only unsupported by any corroborating evidence but was so vague under cross-examination as to the details of his role as landlord that it failed to substantiate that the arrangement existed.

⁴ 56 ALR 483

42. Accordingly, it is my finding that the presumption of a resulting trust has not been successfully rebutted by evidence of the alleged arrangement. Based on the agreed payment of the deposit and all mortgage instalments by the Deceased, the parties only held as joint tenants in law from the time of the conveyance in 1984. From that time they also held the property in equity as tenants in common. As a result, although the Claimant became sole owner in law of the property in 2014, from then on he still held the Deceased's share of the equitable tenancy in common for the benefit of his Estate.
43. There is need however, to consider the issue of occupation rent in assessing the extent of the resulting trust that would govern the proportionate shares in which the Claimant and the Deceased held as tenants in common in equity based on the Resulting Trust. The Case of *Calverley* cited above, further considered the cost of occupation of the property:

"In taking accounts between the parties it will become necessary to consider that the appellant has been making the payments under the mortgage but that on the other hand he has been for some time in sole occupation of the property. Although the appellant may be entitled to credit for the amount of the mortgage payments which exceeded the respondent's share of the amount payable the respondent may, on the other hand, be entitled to receive an occupation rent in respect of the period during which the appellant had sole occupation of the house: see Bernard v Josephs [1982] Ch. 391 at 401, 405 and 409; [1982] 3 All ER 162."

44. Occupation rent is a consideration also in the New South Wales decision of *Kangas v Tsangaras*⁵. In that case the parties purchased a house as joint tenants pursuant to an agreement to contribute equally to the deposit, mortgage repayments and rates. However, the applicant moved out of the house after an altercation with the respondent and ceased making contributions. The applicant brought an application for the sale of the property and the respondent cross-claimed for a declaration of entitlement to the whole estate because he continued to pay for mortgage and rates and it was therefore unconscionable for the applicant to assert title. The applicant submitted that the respondent was not entitled to interest on the contributions to mortgage and rates payments because he resided in property rent free. The court made

⁵ (1990) 5 BPR 11,254; BC900206

an order for sale of the property adjusting the contributions made by the respondent for interest and the payment of fair market rent.

45. In the present case, the Deceased and his family did live in the property for the entire period. Therefore, his estate must be made to account for rents that could have been earned from the property.
46. Since the resulting trust operates to negate the presumption of a joint tenancy in equity, the Claimant and the Deceased must be viewed as tenants in common owning in equity different-sized shares separately. The principle of survivorship applies only in law with the Claimant automatically becoming the sole owner in law since 2014 but the equitable interest of the Deceased had crystalized before his death and remained in place thereafter.
47. **Halsbury's Laws of Australia** states that the "*right of survivorship is essential to the existence of a joint tenancy and a joint tenancy cannot survive its destruction.*"⁶ This implies that once there is no survivorship, there is no joint tenancy in law. If however, as in this case, there was an equitable tenancy that came into existence at the same time as the Joint Tenancy at Law then even though the survivor takes all in law on the death of the other owner and the joint tenancy at law is extinguished, the new sole owner's obligation under the resulting trust remains to be fulfilled. In other words the equitable tenancy in common continues to exist and the sole survivor holds the Deceased's share for his estate.
48. The resulting trust, on the facts of this case, created an equitable tenancy in common and altered the size of the shares in the tenancy in common between the parties. What must now be determined is the size of the Deceased's share based on the excess, if any, of the quantum of his contributions to the purchase price (which amounted to \$416,356.00) over the estimated value of a fair market rent.
49. Counsel for the Defendants contends that an additional factor to be taken into account if there is to be an assessment of shares in the equitable Tenancy in Common is the amount spent on the improvements to the property. She cites *In Re Pavlou (A Bankrupt) 1993 WLR 1046* where a married couple purchased a property jointly subject to a mortgage. Ten years later the husband left the wife in occupation and she then paid the mortgage and general maintenance of the property. Millett J opined at page 1048H:

⁶ Halsbury's Laws of Australia Real Property (2013) [355-11530]

*“On a partition suit or an order for sale adjustments could be made between the co-owners, the guiding principle being that neither party could take the benefit of an increase in the value of the property without making an allowance for what had been expended by the other in order to obtain it: see Leigh v Dickenson (1884) 15 QBD 60” [page 1048G]. “The guiding principle of the Court of Equity is that **the proportions in which the entirety should be divided between former co-owners must have regard to any increase in its value which has been brought about by means of expenditure by one of them.** [Emphasis added]*

50. As aforementioned however, it was my finding in the instant case that renovations done on the property were completed without consultation or agreement with the Claimant. On the evidence herein the Defendants contention that because mortgage interest was paid and the property was renovated by the Deceased, the Claimant’s share in the property was erased is not found to be of merit.

51. On the facts of this case, as in the matter of **Anita Carlton v Jerry David Goodman**⁷ relied on by Counsel for the Claimant in submissions,

“There was no express declaration of the beneficial interests in the House, either in the Transfer or in any other document.”

52. Further, here as in the **Carlton v Goodman** case it is my finding that prior to the purchase there was no discussion between the Claimant and the Deceased or their Attorneys about their respective beneficial interests in the property and there was no agreement about those interests.

53. There was no evidence that the Claimant, having joined in subjecting himself to liability for the mortgage loan so that he and the Deceased could jointly purchase the property, intended by allowing the Deceased to make the mortgage payments to erase his own beneficial interest in the property. On the contrary, it is my finding that the Claimant contributed to the purchase of the Property by becoming liable for and

⁷ [2002]EWCA Civ. 545 NB on the facts of the **Anita Carlton v Goodman** case the parties held a visiting romantic relationship. The circumstances differed from those in the instant case in that it was possible to find evidence of an intention on the part of both Anita, who paid nothing, and Goodman that she was just temporarily helping Goodman to get a mortgage to own the home solely. Accordingly, the Court’s conclusion was that the resulting trust was for the sole benefit of Goodman. It was found that “There was no intention that the transfer of the House into joint names should confer a beneficial interest on Anita. It was part of the arrangements undertaken to acquire the House for his sole use, occupation and benefit. Anita’s participation was intended only to be a temporary involvement on the basis of the limited understanding between them. A resulting trust arose by operation of law for the sole benefit of Mr Goodman”.

continuing to be liable for the mortgage. As he did not make actual payments however, the proportion of his contribution was less than that of the Deceased. These circumstances, as well as the fact that the Deceased and his family occupied the premises rent free for some time, are factors to be taken into consideration in determining the relative share of the beneficial interest in the property held by the parties.

54. There is no evidence of fair market rental before the Court but the Claimant's testimony was that the mortgage payment was accepted by him as the rent. Thus, from 1984 to 2006 there was no excess over rent paid by the Deceased. Thereafter, from 2006 no rent was paid by the Deceased or his family.
55. Using the original mortgage/rental as a fair market rent, the Deceased and his Estate have benefited from rent free residence valued at One Hundred and Eighty-Four Thousand, Four Hundred and Ninety-four Dollars and Fifty Cents (\$184,494.50)⁸ from August 2006 to present. This amount must be set-off against the mortgage payments for the property in determining the Deceased's share. On applying this calculation, the Deceased's share was Two Hundred and Thirty-one Thousand, Eight Hundred and Sixty-one Dollars and Fifty Cents (\$231,861.50) of 55.7% of the property. Accordingly, it is my finding that the Claimant holds a 55.7% share of the property on resulting trust for the Deceased's Estate.

Decision and Order:

56. The Claimant has succeeded in proving that in law he is the sole surviving joint tenant due to the Certificate of Title annexed to his Statement of Case.
57. The Defendants have however succeeded in their defence by establishing that a resulting trust arose, based not upon the alleged written agreement which did not hold sufficient evidential weight but on the actions of the Deceased in making all payments towards the purchase of the property. This payment plan was intended by both parties and created from inception an equitable tenancy in common that co-existed with the Joint Tenancy at law.
58. The Claimant therefore holds a share in the property on trust for the Deceased's Estate and cannot succeed in dispossessing the First and Second Defendants who were allowed to reside in the property by his co-owner in equity. In assessing the proportionate size of the share of the property held for the Estate of the Deceased

⁸ \$1604.30 * 115 months

account must be taken not only of Deceased's mortgage payments. The Claimant's facilitation of the mortgage by accepting to be joined as liable for same from inception to the end must also be taken into account, as must the fact that the Deceased and his family resided rent free in the property for many years.

59. Having reviewed the evidence herein and taken all factors in law and equity into account **IT IS HEREBY ORDERED** as follows:

- a. It is declared that the Claimant is the owner of ALL AND SINGULAR that parcel of land situated in the Ward of Tacarigua in the island of Trinidad, comprising FOUR HUNDRED AND EIGHTEEN POINT ONE SQUARE METRES (418.1m²) be the same more or less delineated and colored pink in the plan registered in Volume 2929 Folio 129 being portion of the lands described in the Certificate of Title in Volume 10 Folio 413 and also described in the Certificate of Title in Volume 2207 Folio 55 and shown as Lot 137 in the General Plan filed in Volume 2834 Folio 109 and bounded on the North by a Lot 136 and by a Road Reserve 10.15 metres wide on the South by Lot 138 and by Lot 162 on the East by Lot 138 and on the West by Lot 136 or howsoever the same may be bounded, butted or otherwise described, together with the dwelling house standing thereon, save and except those reservations and exceptions described in Memorandum of Transfer in Volume 2929 Folio 131 and now known as No. 3 6th Street East, Montague Avenue, Trincity, Trinidad [hereinafter referred to as "the Property"]
- b. It is declared that the Claimant holds a 55.7% share of the Property on a Resulting Trust for the Estate of the Deceased.
- c. The Claimant is to transfer 55.7% of his interest in the Property to the Legal Representative of the Deceased.
- d. Should the Claimant fail to transfer 55.7% of his interest in the Property to the Legal Personal Representative of the Deceased, the Registrar is hereby empowered to transfer said interest to the Legal Personal Representative of the Deceased.
- e. It is declared that the 1st and 2nd Defendants are lawfully in possession of the Property and that they, any other person who is a beneficiary of the Estate of the Deceased, or any such person that the Legal Personal Representative of the Deceased so authorize be allowed to enjoy the said property without

interference or obstruction by the Claimant, his heirs or assigns, provided 44.3% of a fair market rental is paid to the Claimant.

- f. The Claimant, his heirs, assigns, servant/agents are prevented and restrained from attempting to sell, assign or otherwise part with the Property without the Agreement of the Legal Personal Representative of the Deceased.
- g. The Claimant is to pay to the Defendants prescribed costs on the Claim and the Counterclaim in the amount of Fourteen Thousand Dollars (\$14,000.00).

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by: Christie Borely

Judicial Research Counsel I