

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2017-03450**

**BETWEEN**

**ISAAC DONOVAN**

**Claimant**

**AND**

**HILTON DONOVAN**

**VERONICA GUERRA-DONOVAN**

**(wrongly sued as VERONICA DONOVAN)**

**REBECCA DONNA DONOVAN**

**Defendants**

**Before the Honourable Madame Justice Margaret Y Mohammed**

**Delivery date: May 24, 2019**

**APPEARANCES:**

Mr Brian Mc Cutcheon Attorney at law for the Claimant.

Mr Zeik Ashraph Attorney at Law for the Defendants.

**JUDGMENT**

1. It is not uncommon in West Indian societies for adult children to financially assist their parents to acquire a home. The question is whether such financial assistance is a gift out of love and affection from the child to the parent or whether there were conditions attached to it. In the instant

action these issues are explored since the Claimant (“Isaac”) is one of the children of the First Defendant (“Hilton”) and the brother of the Third Defendant (“Rebecca”). The Second Defendant (“Veronica”) is Hilton’s second wife. The parties shared a close family relationship before and after the death of Hilton’s first wife and mother of Isaac and Rebecca, Laurie. After Laurie died Isaac and the rest of the family were concerned for Hilton and they accepted Veronica since they agreed that Hilton required companionship. The main issue in this action is whether Hilton’s share in the property situated at Lot #827 Union Hall, San Fernando Housing Development (“the disputed property”) is held on trust by Hilton for Isaac.

#### **THE CLAIM**

2. According to Isaac, sometime in the 1980s, Hilton applied to the Trinidad and Tobago Housing Development Corporation (“the HDC”) for approval of the allocation of a property (“the Application”). In or around March 2006, Isaac, Hilton and Laurie discussed the Application and it was agreed that because Hilton was a retiree, Isaac would be a co-applicant on the Application. It was also agreed amongst the family that Isaac would purchase a property allocated from the HDC; Hilton and Laurie would reside in it until their deaths; and the beneficial interest in the allocated property would vest solely with Isaac. It was further agreed that because the Application was in the names of Isaac and Hilton, that the deed of lease from the HDC would be executed in their names as tenants and the HDC as landlord.
3. HDC advised Isaac and Hilton on 19 October 2007, that approval had been granted to them for the allocation of the disputed property.
4. In reliance upon the agreed position between Isaac and Hilton, Isaac paid HDC the full purchase price of \$348,390.17 for the disputed property.

5. On 18 January 2011 Hilton and Laurie executed mutual Last Wills and Testaments (“the Wills”). The Wills were in identical terms in that should either Hilton or Laurie predecease the other, any property would pass to the surviving spouse. Thereafter, any property would pass unto Isaac for his sole use and benefit absolutely.
6. Laurie passed away on 1 August 2014 and Hilton married Veronica on 1 March 2015. By Deed of Gift dated 17 July 2017 and registered on 4 August 2017 as DE2017 018106 16D001 (“the Deed of Gift”), Hilton assigned onto himself, Veronica and Rebecca his one undivided half share estate title and interest in the disputed property.
7. Based on the foregoing facts Isaac has sought the following relief:
  - a. A declaration that the Deed of Gift is null and void and of no effect;
  - b. Further and/or in the alternative, an order that the Deed of Gift is set aside and/or revoked;
  - c. A declaration that Isaac is the beneficial owner of the disputed property;
  - d. A permanent injunction prohibiting Hilton from selling, leasing, gifting, devising and/or otherwise disposing of the disputed property during his lifetime to any person other than Isaac; and
  - e. Costs.

## **THE DEFENCE**

8. There was one Defence filed on behalf of Hilton, Veronica and Rebecca. They have disputed the allegations of the common intention and the payments made by Isaac with the following facts. They stated that Hilton was employed at Kroger Food Stores ("Kroger") in Louisville, Kentucky in 2006. Hilton did not qualify for the purchase of the disputed property due to his advanced age and Hilton sought to have Isaac added as a co-applicant and Isaac agreed "*out of natural love and affection he had for his parents*". Hilton and Isaac understood that they would be joint owners of the disputed property. Laurie handled the financial affairs of Hilton due to his medical issues, including the payment of monies to the HDC. Laurie regularly sent monies to Isaac to pay towards the purchase price. Hilton and Laurie gave Isaac the sum of USD\$26,000.00 from donations from Kroger and from a settlement from a motor vehicle accident.
9. According to the Defendants, if Isaac contributed more than one-half of the purchase price of the disputed property such contribution was out of natural love and affection that Isaac bore to Hilton and it was therefore a gift.
10. In response to a request for further and better particulars, the Defendants stated that they could not recall the dates and the amounts of money on each occasion that Laurie sent to Isaac to pay the HDC for the purchase of the disputed property.

**THE ISSUE**

11. The sole issue for determination is whether Hilton holds his interest in the disputed property on trust for Isaac.

**WHETHER HILTON HOLDS HIS INTEREST IN THE DISPUTED PROPERTY ON TRUST FOR ISAAC.**

12. It was not in dispute that there was no written document that Hilton holds his interest in the disputed property on trust for Isaac.
  
13. It was submitted on behalf of Isaac that he is the true legal and beneficial owner of the disputed property since an express oral trust or an implied trust arose in his favour since he paid the HDC the purchase price for the disputed property and/or there was a common intention by Isaac and Hilton that the latter would hold his interest in the disputed property for Isaac.
  
14. On the other hand, Counsel for Hilton submitted that:
  - (a) Isaac did not pay the full purchase price for the disputed property since Hilton paid the deposit towards the purchase of the disputed property;
  - (b) There was no prior agreement between Isaac, Hilton and Laurie that Isaac would pay the full purchase price for the disputed property;
  - (c) Isaac was added as a co-applicant for the disputed property as a matter of convenience and not with the intention that he would be the true owner of the disputed property;
  - (d) If there was a common intention between Hilton, Laurie and Isaac that Hilton would hold his interest in the disputed property on trust for Isaac then when Isaac took Hilton to an Attorney at Law's office "to make everything clear" an agreement, a conveyance or some other document whereby Hilton acknowledged the trust would have been prepared. No such document having been

prepared it is more probable that there was no such intention between the parties.

- (e) Isaac did not assert that Hilton could not leave his interest in the disputed property for the grandchildren of the family.

### **The applicable law**

15. There was common ground between the parties on the principles in law relating to a resulting trust.
16. The law on the presumption of a resulting trust and the rebuttal of such a presumption was summarised by Rahim J at paragraphs 23 and 25 in **Wayde Melville v Kathryn Duke**<sup>1</sup> where he stated:

“23. The circumstances outlined above give rise to the principles of resulting trust. Where, upon a purchase of land, one person provides the purchase money and the conveyance is taken in the name of another; there is then a presumption of a resulting trust in favour of the person providing the money, unless from the relation between the two, or from other circumstances, it appears that a gift was intended: Halsbury's Laws of England. Volume 16(2) (Reissue), para. 853; Dyer v Dyer [1775-1802] All ER Rep 205; see also Re Vandervell's Trust (No. 2) [1974] Ch 269 at 294.”

“25. The Defendant may rebut this presumption by, inter alia, leading evidence that the property was intended as a gift: see Underhill and Hayton Law of Trusts and Trustees 16th Edition, Article 31 page 349. It is therefore the Defendant's burden to prove

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<sup>1</sup> CV 2010-04542

that the Claimant intended a benefit to her: *Seldon v Davidson* [1968] 2 All ER 755.”

17. The presumption of advancement can rebut the presumptions set out above. In the presumption of advancement, in certain types of special relationships there is a presumption that where **X** gratuitously transfers property to **Y** and there is no clear evidence of **X**'s intention, equity will presume that it was a gift and an advancement. One such special relationship is father to child. **Underhill & Hayton, Law of Trust and Trustees**<sup>2</sup> described this as:

“Here, a presumption of advancement has been made: it has been presumed that X intends Y to take the property beneficially for himself because fathers generally wish to advance their children in life by helping them financially.”
18. However, this presumption of advancement does not apply in favour of a father when the child has purchased the property.
19. A constructive trust will be imposed by equity in situations where **Y** attempts to obtain or retain for himself an interest in a property of **X** by unconscionably taking advantage of strict legal (or equitable) principles<sup>3</sup>.
20. A constructive trust arises in connection with the legal title to a property whenever **Y** has so conducted himself so that it would be inequitable to allow **Y** to deny **X** his beneficial interest in the property<sup>4</sup>. The constructive trust is imposed to give effect to the parties' expressed or inferred common intention, whether at the time of purchase or subsequently, that **X** has a certain beneficial interest in the subject property and the **Y** has led

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<sup>2</sup> 8<sup>th</sup> ed

<sup>3</sup> Underhill & Hayton, *Law of Trusts and Trustees*, 8<sup>th</sup> Ed., (2010), para 30.1

<sup>4</sup> Halsbury's *Laws of England* (5<sup>th</sup> Ed.) Vol. 98, para 117

X to act to its detriment in reliance on the said intention (express or inferred) and so making it unconscionable to allow Y to deny the interest due to a lack of a formal declaration<sup>5</sup>.

21. The “common intention” of the ownership of the property is established by agreement between the parties; or by the parties’ conduct in their dealings towards the property. The agreement can be based on evidence which establishes an express agreement; or evidence of conduct from which the court can infer the existence of such an agreement<sup>6</sup>. To evidence the express agreement, the parties can rely on evidence of discussions “*however imperfectly remembered and however imprecise their terms may have been*”<sup>7</sup>.
22. If there is no evidence of express discussions of an agreement, the Court must examine the conduct of the parties to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust<sup>8</sup>.
23. **Halsbury’s Laws of England** noted that there is much common ground between [proprietary estoppel] and the constructive trust<sup>9</sup>. A cause of action in proprietary estoppel arises when X makes a representation to Y concerning property upon which Y has relied on to his detriment and it will be unconscionable for X to resile from that earlier representation<sup>10</sup>. The court will inquire into i) whether an equity arises in Y’s favour out of the

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<sup>5</sup> Underhill & Hayton, Law of Trusts and Trustees, 8<sup>th</sup> Ed., (2010), para 30.9

<sup>6</sup> Underhill & Hayton, Law of Trusts and Trustees, 8<sup>th</sup> Ed., (2010), para 30.16

<sup>7</sup> Lloyd’s Bank plc v Rosset [1991] 1 AC 107

<sup>8</sup> Underhill & Hayton, Law of Trusts and Trustees, 8<sup>th</sup> Ed., (2010), para 30.17

<sup>9</sup> Halsbury’s Laws of England (5<sup>th</sup> Ed.) Vol. 98, para 120

<sup>10</sup> Halsbury’s Laws of England (5<sup>th</sup> Ed.) Vol. 47, para 392

conduct and relationship of the parties; ii) what is the extent of the equity; and iii) what is the relief appropriate to satisfy the equity.

24. Based on the pleadings there were different versions of the events concerning the payment of the purchase price and the alleged common intention. The determination of the differences is fact driven. According to the learning in **Horace Reid v Dowling Charles and Percival Bain**<sup>11</sup> when determining questions of fact the Court must weigh the versions of the events, on a balance of probabilities, in light of the evidence and in doing so the Court is obliged to check the impression of the evidence of the witnesses on it against: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions.

#### **Isaac's witnesses**

25. Isaac relied on the evidence of three witnesses to support his assertion. He gave evidence and he called Ms Enid Jack and Ms Yvette Diana Drayton.
26. Isaac testified that he is the true beneficial owner of the disputed property which was more particularly described within the Second Schedule of the Deed of Lease dated 21 August 2009 and registered as DE2009 021529 50D001 ("the Deed of Lease"). According to Isaac, the HDC leased the disputed property to Hilton and him for a term of 199 years, commencing on 1 January 2009, for a consideration of \$348,390.17. Isaac stated that the true ownership of the disputed property is different from the paper title as stated in the Deed of Lease because of an agreement between himself, Hilton and Laurie in or around March 2006.

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<sup>11</sup> Privy Council Appeal No. 36 of 1987.

27. Isaac testified that Hilton retired from his employment as a supervisor with the National Union of Government and Federated Workers in San Fernando in or around 1999. Laurie was not employed at the time. Around 2000, Hilton and Laurie emigrated to Louisville, Kentucky in the United States of America. At the time of Hilton's retirement, discussions were held amongst the family, including Isaac, Hilton, Laurie and their son Luke concerning the disputed property.
28. According to Isaac, in or around early 2006, Hilton and Laurie told him that HDC indicated to them that Hilton was selected to be allocated a property by the HDC. However, due to his advanced age and retirement, Hilton was no longer eligible to qualify for a mortgage to purchase the interest in a property.
29. Isaac's parents also told him that they wanted to purchase a property so that they had somewhere to live in Trinidad in their old age but they did not have the money to purchase the allocated property without a mortgage and, as such, the only alternative was to have a co-applicant on the Application who would qualify for a mortgage.
30. Isaac testified that at first, Hilton, Laurie, Isaac and Luke discussed the possibility of Luke becoming a co-applicant with Hilton. Isaac recalled that although enquiries were made for Luke, who resided in Trinidad, to be joined as a co-applicant, Luke did not qualify for a mortgage due to a lack of income and job security. In cross-examination, it was put to Isaac by Counsel for the Defendants that Luke had more ties to Trinidad than Isaac. Isaac did not agree to this since he stated that he was renting a property in Tobago in 2004/2005.

31. According to Isaac, in or around March 2006, whilst Hilton and Laurie were residing in Louisville, he visited them and they told him that they still wanted to purchase the property allocated to Hilton by the HDC. Isaac testified that he indicated that he would join as a co-applicant in the Application with Hilton since Luke could not obtain a mortgage and so that Hilton and Laurie would not lose the chance of obtaining a property in Trinidad. Isaac indicated to Hilton and Laurie that he would purchase the disputed property and that Hilton and Laurie could live in it until they passed away and after this the beneficial interest in it would vest solely with Isaac. According to Isaac, this option would give Hilton and Laurie a home to live in Trinidad in their old age and Isaac would have a place to live in Trinidad after they passed away. According to Isaac, Hilton and Laurie accepted and agreed to this suggestion.
32. Isaac testified that the HDC advised Hilton and him in a letter dated 19 October 2007 that they had been approved the allocation of the disputed property<sup>12</sup>. The said letter requested that Isaac and Hilton attend the Allocations Department of the HDC. On 5 November 2007, Isaac and Laurie attended the Allocations Department in Port of Spain because Hilton did not want to travel to Trinidad.
33. At the Allocations Department, Isaac and Laurie executed the agreement between the HDC and Isaac and Hilton for the purchase of the disputed property from the HDC. Laurie signed the agreement on behalf of Hilton and afterwards Isaac paid the deposit of \$17,550.00 for the disputed property at the cashier.<sup>13</sup>

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<sup>12</sup> Trial Bundle B, page 130

<sup>13</sup> Trial Bundle B, page 132 - 133

34. Isaac testified that the said deposit was paid from his money and he received a receipt from the HDC<sup>14</sup>. Isaac said that he also paid the fees for the preparation of the agreement in sum of \$200.00 and he received another receipt for this sum from the HDC<sup>15</sup>. Isaac's Counsel brought to his attention a letter from First Citizens Bank ("FCB") to Messrs. Ashraph & Ashraph dated 14 June 2018<sup>16</sup> which referred to a Manager's Cheque Number 49703 in the sum of \$17,750.00. The said letter was disclosed to Isaac after the exchange of witness statements and the Court permitted Isaac to offer his explanation on the contents of the said letter. Isaac explained that he was familiar with the Manager's cheque since when he and Laurie went to the meeting at the HDC to sign the lease, he did not have an account in Trinidad. Isaac said that he brought the equivalent amount in cash with him in US dollars and deposited the monies in the account which Hilton and Laurie had with FCB and a Manager's cheque was drawn on the account from that money.
35. In cross-examination Isaac admitted that when the said Manager's cheque was drawn from the FCB account of Hilton and Laurie, he had an account with RBC Bank in Tobago at that time but he could not obtain a manager's cheque from his account at the time.
36. According to Isaac, on 8 January 2008, he met with a representative of Trinidad and Tobago Mortgage Finance Company Limited ("TTMF") to obtain a mortgage but he was denied since he was employed overseas.

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<sup>14</sup> Trial Bundle B, page 135

<sup>15</sup> Trial Bundle B, page 137

<sup>16</sup> Trial Bundle B, page 222

37. Isaac was questioned by Counsel for the Defendants about two Powers of Attorney in favour of him from Hilton and Laurie dated 16 August 2008<sup>17</sup>. It was brought to the Court's attention by Isaac's Attorneys that both Powers of Attorney were only provided to Isaac and his Attorneys on the morning of the trial pursuant to a Further Supplemental List of Documents filed and served on 21 March 2019.
38. In cross-examination, Counsel for the Defendant drew Isaac's attention to paragraph 8 of the Power of Attorney from Hilton to Isaac. Counsel put to Isaac that the Power of Attorney was created to allow Isaac to have access to Hilton's and Laurie's bank account. Isaac vehemently denied this and instead he indicated that he never took any money from the account and he did not know how or why the Power of Attorney was created.
39. Isaac testified that after he paid \$17,550.00 towards the deposit of the disputed property, he made further payments towards its purchase from his own money. According to Isaac, as at the 17 August 2009, he had personally paid \$103,072.83 to the HDC for the disputed property. Isaac stated that each time he made the payment to the HDC, he attended its offices in Port of Spain in person and paid by cash or cheque. At that time, he was residing in the United States of America and he visited Trinidad specially to ensure that the payments were made.
40. Isaac said he retained the receipts he received from the HDC for the payments which he made. Based on his receipts he said that he could account for \$100,607.69 of the \$103,072.83 paid by him before 17 August 2009<sup>18</sup>. The said receipts contained the following payments:

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<sup>17</sup> These documents are not in the trial because they were only adduced by the Defendants at the trial of the action.

<sup>18</sup> Trial Bundle B, page 135, 137, 143-148

- a. Payment of \$17,550.00 on 5 November 2007 by receipt number 00001000000069903;
  - b. Payment of \$200.00 on 5 November 2007 by receipt number 00001000000069904
  - c. Payment of \$5,330.46 on 11 July 2008 by receipt number 398442
  - d. Payment of \$2,665.23 on 13 January 2009 by receipt number 415634
  - e. Payment of \$61,534.77 on 13 January 2009 by receipt number 00001000000135364
  - f. Payment of \$2,665.25 on 18 February 2009 by receipt number 432753
  - g. Payment of \$5,331.00 on 14 April 2009 by receipt number 454158
  - h. Payment of \$5,331.00 on 16 June 2009 by receipt number 476418.
41. According to Isaac by letter dated 17 August 2009, he and Hilton were called upon to pay the balance of \$245,317.34 within 90 days of the date of the letter. On 18 August 2009 and 21 August 2009, Isaac said he personally attended the cashier of the HDC offices at Port of Spain and paid by two cheques in the sums of \$220,000.00 and \$25,317.34 respectively.<sup>19</sup>.
42. Isaac testified that on 21 August 2009, he executed the Deed of Lease on his behalf and on behalf of Hilton pursuant to a Power of Attorney which Hilton had executed in his favour since Hilton was living in Louisville and he did not return to Trinidad. On the said 21 August 2009, Isaac said he

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<sup>19</sup> Trial Bundle B, page 150 - 151

paid at the offices of the HDC the fees for the affidavit, registration, search, preparation of the Deed of Lease, and stamp duty<sup>20</sup>.

43. Isaac denied that Laurie and/or Hilton gave and/or sent monies to him to pay the purchase price of the disputed property since according to him this was not the arrangement that was agreed in March 2006.
44. According to Isaac, on 18 January 2011 Hilton and Laurie met with an Attorney-at-Law from J.D. Sellier + Co., Mr Hayden Gadsby, and drafted the Wills. The Wills were in identical terms in that should either Hilton and Laurie predecease the other, any property would pass to the surviving spouse and thereafter the interest in the disputed property would pass to Isaac<sup>21</sup>.
45. In cross-examination, Isaac accepted that a Will can be changed at anytime but he maintained his position that the Wills showed an intention for him to be the owner of the disputed property after the deaths of Hilton and Laurie.
46. According to Isaac, around 1 March 2015, Hilton married Veronica. Shortly after their marriage, Veronica moved into the disputed property without any protest from him.
47. Isaac said that in or around March 2016, he visited the disputed property and he noticed that works were ongoing to install fences. Hilton advised Isaac that Veronica was paying workmen to install the fences. Isaac became concerned by these actions and he told Hilton that he did not want

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<sup>20</sup> Trial Bundle B, page 153 - 157

<sup>21</sup> Trial Bundle C, page 305 – 308

Veronica to spend any money on the disputed property. Isaac testified that in or around August 2016 Isaac paid Veronica over \$24,000.00 which she had asserted that she “invested” in the disputed property.

48. According to Isaac, at around this time, Hilton started to pressure him to sell his share in the disputed property to him and Veronica. Hilton asked him a number of times to sell his share. However, Isaac told Hilton and Veronica that he and Hilton owned 100% of the disputed property jointly and not 50% each and Isaac would not sell 50%. After this, Hilton then requested that Isaac consent to include Veronica on the Deed of Gift.
49. Isaac stated that on or around 29 June 2017, he received a letter dated 25 May 2017 from an Attorney-at-Law, Surijdeo Nanan purporting to act on behalf of Hilton<sup>22</sup>. The letter indicated that Hilton instructed Mr Nanan to prepare the Deed of Gift to assign “*his one undivided half share estate and interest in*” the disputed property from Hilton to himself, Veronica and Rebecca. The letter also requested Isaac’s consent to the transaction and stated that if the Attorney-at-Law did not hear from Isaac within 14 days of the date of the letter he would treat this as implied consent to the gift.
50. In cross-examination, Isaac denied that his grievance in the matter was not the loss of the purchase price of the disputed property but it was because Hilton had left something to Veronica. Isaac also admitted that he had no issue with Hilton leaving his interest in the disputed property to Rebecca or to the grandchildren of the family.
51. In my opinion, Isaac was a witness of truth. I found his evidence to be credible since it was in a large part consistent with his pleaded case. His evidence in chief and in cross-examination were also consistent. He had

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<sup>22</sup> Trial Bundle B, page 159 – 160

contemporaneous documents namely receipts to account for the sums he stated he paid to the HDC for the disputed property. He was able to provide reasonable explanations for any deficiency in the receipts and the extent of the details which he gave with respect to his dealings with the HDC demonstrated his first-hand knowledge.

52. Ms Enid Jack is the sister of Laurie. Ms Jack testified that she had a very good relationship with Laurie and Hilton and she spoke to Laurie every day when she was alive, including two to three times in the same day.
53. Ms Jack recalled speaking with Laurie and Isaac when the disputed property was purchased in Trinidad. Ms Jack testified that at the time, Laurie told her that she and Hilton were not able to secure credit to purchase the disputed property and that Hilton did not have enough money to purchase it. Laurie told Ms Jack that Isaac had agreed to purchase the disputed property for them and that he would be a co-applicant with Hilton. Laurie told Ms Jack that she and Hilton wanted a house in Trinidad for when they get older and that after they both passed on, the disputed property would go back to Isaac.
54. Ms Jack said that she spoke to Isaac about this. Isaac indicated to Ms Jack that he wanted to help his parents and he was happy to assist in purchasing the disputed property for them to have somewhere to live as they got older.
55. According to Ms Jack, in or around late 2017, Isaac told her that Hilton gave part of the disputed property to Brenda and Rebecca. Ms Jack stated that in or around January 2018, she telephoned Hilton to enquire if what Isaac told her was true. Ms Jack testified that she reminded Hilton that Isaac had

bought the disputed property for Laurie and him to live in and that it was Isaac's property. Ms Jack also told him that he did not own 50% of the disputed property and that he could not give it away. Ms Jack reminded Hilton that it was understood that even if Isaac, a pilot, had died, Laurie and Hilton would ensure the disputed property went to Isaac's children. According to Ms Jack, Hilton did not deny what she stated but he indicated "*you don't know everything*".

56. In cross-examination, Ms Jack explained how she recorded a conversation she had with Hilton. She said she had two telephones, one to record and one to speak with Hilton and that no one helped her with the telephone recordings. Ms Jack denied that she called Hilton with the express intention to elicit information from him about the matter.
57. Ms Jack's evidence that she shared a close relationship with Hilton and Laurie was unshaken in cross-examination. In my opinion it was more probable that Laurie would have shared with Ms Jack the details of how Hilton and Laurie came to live on the disputed property as detailed by Ms Jack.
58. Ms Yvette Diana Drayton is a long standing family friend of the Donovan family. According to Ms Drayton she knew the Donovan's since at least the 1990s when she was working at Workers' Bank (now First Citizens' Bank) on High Street, San Fernando,
59. Ms Drayton testified that over the years she became very close to Hilton and Laurie. She stated that she visited Hilton and Laurie when they lived in the Cocoyea area in San Fernando before they emigrated to the United States of America. She testified that whilst Laurie was in the United States

of America, she requested Ms Drayton to assist her with her local banking arrangements because she trusted her and because she was working at the bank where her account was. Ms Drayton indicated that Laurie never asked her to provide Isaac with any money from Hilton and Laurie's account at FCB. Ms Drayton confirmed in cross-examination that she could not assist the Court with any payment from the parties towards the purchase price of the disputed property.

60. However, Ms Drayton stated that when she visited Hilton and Laurie, they both made it clear that the disputed property belonged to Isaac.
61. In my opinion, the only value of Ms Drayton's evidence was that she was a trusted friend of Hilton and Laurie to the extent that Laurie trusted her to do bank transactions for her while she lived abroad and she never paid monies from Hilton and Laurie's account at FCB to Isaac. However, Ms Drayton was in no position to give any evidence with respect to the payments made by any of the parties to HDC for the disputed property.

**The Defendants witnesses**

62. Hilton testified that he made the Application to the HDC in the 1980s and in or around 1999 he and Laurie emigrated to the United States of America. He, Hilton worked in Kroger as a "bagger" until 2008.
63. In cross-examination, Hilton explained that prior to emigrating to the United States of America he worked for the National Union of Government and Federated Workers in San Fernando as a Supervisor. Hilton stated that he had experience in representing aggrieved workers in bi-lateral meetings with employers, in the Ministry of Labour and in the Industrial Court. Hilton also testified that he worked as a Social Worker and Probation Officer, and

in the Office of the Wife of Prime Minister in Grenada before emigrating to Trinidad.

64. In cross-examination, Hilton explained that as a “bagger” he assisted customers of the supermarket with their groceries and was earning USD\$10.00 per hour and worked “roughly” 38 to 40 hours per week. Hilton confirmed that Laurie was not working at the time and that Isaac’s income was healthier than his and Luke’s income. Hilton stated that he was renting the property he resided at in the United States of America and that Isaac owned a property in Grenada where he was living with his wife and children.
65. Hilton testified that he had certain medical issues concerning his heart and therefore Laurie had control of all of his finances and family affairs including bank accounts. In cross-examination, Hilton confirmed that the two bank accounts were the FCB account in Trinidad and the PNC Bank account in the United States of America. Hilton confirmed that Laurie had full control of those accounts until she passed away in August 2014. According to Hilton, Laurie handled all financial transactions with those accounts due to his health issues. Hilton further explained that Isaac only had access to the said accounts when instructed by Laurie. However, Hilton could not recall how much money (if any) Isaac was instructed to or did take from the accounts.
66. According to Hilton in or around 2006, he and his family were informed by the HDC that he could not qualify for a property alone and that he needed to get a co-applicant. In cross-examination Hilton confirmed that he did not qualify for a property because he was retired and he did not qualify for a mortgage. He said that it was discussed and agreed that Luke should

apply with Hilton. Hilton accepted in cross-examination that this was a sensible way for Luke to get a property because he did not have any property at the time. According to Hilton, Luke's application failed because Luke's income was not high enough to qualify for a mortgage. Hilton stated that it was agreed amongst "the family" that Isaac should apply with Hilton. According to Hilton, Isaac was joined to allow Hilton to qualify for a property. Hilton stated that Isaac had his own house in Grenada and he had told Hilton that he had no intention of residing in Trinidad.

67. According to Hilton, he and Isaac were approved for a house by the HDC and then the agreement for sale was signed by Isaac and Laurie on 2 November 2007. Hilton indicated that he was not present because of a "medical condition". Hilton also testified that he and Laurie had prepared and executed two Powers of Attorney in favour of Isaac so that Isaac could handle the affairs of Hilton and Laurie in Trinidad. However, in cross-examination Hilton was not able to indicate how much money (if any) Isaac paid from the accounts of Hilton and Laurie in Trinidad.
68. Hilton also stated that he had obtained the letter from FCB dated 14 June 2018<sup>23</sup> but he did not make further reference to the letter.
69. According to Hilton, in 2006 he became ill and customers and employees of Kroger began to collect monies to give to him as donations. To support this assertion, Hilton relied on a leaflet from Kroger<sup>24</sup>. In cross-examination, Hilton confirmed that he had been an employee of Kroger for 6 years; he did not qualify for Social Security benefits in the United States

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<sup>23</sup> Trial Bundle B, page 222

<sup>24</sup> Trial Bundle B, page 224

of America; and that the donations were for a heart surgery, which he did not require; and living expenses.

70. Hilton indicated that he collected USD\$12,000.00. In cross-examination, Hilton confirmed that he did not receive the USD\$12,000.00 in one payment but in smaller payments by cheques. Hilton stated in cross-examination that neither he, nor anyone instructed by him paid Isaac USD\$10,000.00 from that money.
71. Hilton also testified that he and Laurie received USD \$38,055.34 from a road traffic accident in the United States of America<sup>25</sup> on 9 December 2009 which was deposited into their account in PNC Bank.
72. According to Hilton, Isaac did not pay the entire purchase price for the disputed property since Laurie paid the money directly to the HDC and she also gave Isaac money to pay the HDC for the disputed property. However, in cross-examination, Hilton changed his position and stated that Isaac paid “a little less than three quarters” of the purchase price and that he, Hilton paid the remainder. Hilton stated for the first time in cross-examination that he personally went to the HDC’s offices to pay money towards the purchase price. Hilton stated he went once or twice and then he said that he went two or three times. Yet Hilton could not recall when he went to the HDC to pay monies but he stated that it would have been at the ending of the month. He was unable to state the month and the year. He was unable to state the purchase price of the disputed property and he could not state what three quarters or one quarter of the purchase price was at the time.

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<sup>25</sup> Trial Bundle B, page 226

73. In cross-examination, Hilton stated that he was not aware that a deposit for the purchase price of the disputed property was paid in November 2007 and he was not able to indicate where the funds for that deposit came from. Hilton admitted that he had not read Isaac's witness statement and he did see all of the receipts Isaac had received from the HDC after he had made the payments.
74. Counsel for Isaac showed Hilton two documents during cross-examination; one, was an account statement of Isaac and Annetta Donovan from TECU Credit Union Co-operative Society Limited ("TECU") for the quarter ending 30 September 2009<sup>26</sup> and the second was an official cash receipt from the HDC dated 18<sup>th</sup> August 2009<sup>27</sup>. Hilton confirmed that the first document showed a withdrawal of \$220,000.00 on 17 August 2009 and the second document showed a payment to the HDC from a FCB account on 18 August 2009. Counsel for Isaac put to Hilton that these documents demonstrated that Isaac paid the sum of \$220,000.00 to the HDC. Hilton did not provide any answer and he indicated that he needed further information because it was the first time that he was seeing the figures.
75. Hilton testified that Isaac "boasted" that he helped Hilton pay for the disputed property and that it was a gift from Isaac to Hilton and the family. Hilton also testified that he gave his half share in the disputed property to himself, Veronica and Rebecca. In cross-examination, Hilton stated that Isaac confronted him about the chain link fence installed by Veronica and that the fence was removed.

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<sup>26</sup> Trial Bundle C, page 301

<sup>27</sup> Trial Bundle C, page 269

76. I have found that Hilton was not a witness of truth when he stated that Isaac did not make any payments towards the acquisition of the disputed property since he admitted in cross-examination that Isaac paid three quarters of the purchase price. I have also attached no weight to Hilton's evidence that he went into the HDC to make some payments for the purchase of the disputed property since this was inconsistent with his case and he was also unable to provide any documents to demonstrate that he made the said payments. In my opinion, it is more probable that he would have such documents if he made the said payments.
77. Rebecca testified that Hilton and Laurie emigrated to the United States of America in 1999 and Hilton became a "bagger" at Kroger. Rebecca stated that Hilton was suffering heart complications and because of this Laurie was in charge of Hilton's financial and other affairs.
78. According to Rebecca, Hilton received USD\$12,000.00 in donations from Kroger's customers and employees. Rebecca stated that Laurie and Rebecca *"had a discussion and from that discussion I was informed that my mother was using \$10,000.00 of that money we received from the donations to give to Isaac towards payment of the house my father was given by the [HDC]."*
79. Rebecca stated that Hilton and Laurie were in a road traffic accident in the United States of America and received a payment of USD \$38,055.34 from the incident and the money was deposited in the PNC Bank account.
80. At best Rebecca's evidence supported the Defendants case that Hilton and Laurie received the sum of USD \$12,000.00 and USD \$38,055.34 while they were living in the United States of America. I have attached no weight to her evidence that the sum of USD \$10,000.00 was given to Isaac to pay the

HDC, towards the disputed property since there was no receipt to support this evidence.

**Payments for the disputed property**

81. I have concluded that the weight of the evidence supports a finding that Isaac and not Hilton and/or Laurie paid the HDC for the disputed property for the following reasons.
  
82. First, Isaac's case was consistent and both his evidence in chief and in cross-examination supported his pleaded case. Isaac also provided the Court with contemporaneous documents which he still had in his possession namely official receipts from the HDC in relation to all of the payments for the disputed property save and except for the sum which Isaac admitted he was unable to locate the receipt for. In my opinion, it is more probable that the reason Isaac had the receipts was because he went into the offices of the HDC and paid the monies to the HDC for the disputed property from his own funds.
  
83. Second, the Defendants did not provide a single receipt from the HDC to support their case that Hilton and Laurie made payments to the HDC. In my opinion, if Laurie or Hilton had made any payments they would have had those receipts.
  
84. Third, the Defendants' case was not consistent. At first, the Defendants pleaded case was that Hilton and Laurie made the payments for the disputed property both to Isaac and to the HDC<sup>28</sup>. Later in the same Defence, the Defendants pleaded that if Isaac contributed more than half of the disputed property's purchase price, then this contribution was a gift

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<sup>28</sup> Paragraph 5c of the Defence

in favour of Hilton. Notably the Defendants did not plead that it was a gift to both Hilton and Laurie<sup>29</sup>. In my opinion, the position adopted in the Defence was not plausible since it was either Hilton and Laurie paid for the disputed property either by themselves or by giving Isaac the money to pay the HDC on their behalf, or that all three of them namely, Isaac, Hilton and Laurie paid for the disputed property, but that the sums paid by Isaac was a gift to both Hilton and Laurie. Even if Isaac's payments were done as a gift it was not plausible that he would have done so only for Hilton and not for both Hilton and Laurie since the evidence was that the purpose for the purchase of the disputed property was so that both Hilton and Laurie could have a home in Trinidad.

85. Fourth, even if the Defendants case was that Hilton and/or Laurie gave money to Isaac to pay the HDC for the disputed property, the evidence by the Defendants, in particular Hilton did not support this position. Hilton stated in his witness statement<sup>30</sup> that Isaac had access to "our accounts". Hilton did not state which accounts. In cross-examination Hilton explained that Isaac only had access to the accounts "when instructed" and he said that Isaac was instructed by Laurie. However, this evidence was not credible since Hilton could not recall how much money (if any) Isaac was instructed by Laurie to or did take from the accounts; there was no evidence from Hilton of the sum of money in the said accounts for Isaac to access; the Powers of Attorney were subject to the instructions of Hilton and Laurie and there was no evidence of any such instructions.
86. Fifth, even if the Defendants case was that Isaac contributed more than one-half of the purchase price for the disputed property as a gift to Hilton, there was no evidence from Hilton to support this assertion. Remarkably,

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<sup>29</sup> Paragraph 5f of the Defence

<sup>30</sup> Paragraph 10 of Hilton's Witness Statement

in cross-examination Hilton changed the position and stated that he and Laurie paid one quarter of the purchase price and Isaac paid three quarters. This evidence from Hilton was not credible since Hilton was unable to state both in his evidence in chief and in cross-examination the total purchase price, how much was the one-quarter contribution by he and Laurie and how much Isaac paid. Indeed, against this backdrop it was reasonable that Hilton appeared to be genuinely surprised when Counsel for Isaac put to Hilton that Isaac paid \$220,000.00 towards the purchase price of the disputed property in August 2009.

87. Sixth, there was no evidence to support the Defendants case that Hilton and Laurie gave Isaac USD\$26,000.00 from donations from Kroger and monies received from a road traffic accident to pay to the HDC for the disputed property. Hilton testified that he received the sum of \$USD12,000.00 as the donation collected at Kroger. At paragraph 11 of his witness statement, he stated that the sum of USD\$10,000.00 of the USD\$12,000.00 was paid to Isaac to pay for the disputed property. This evidence was undermined by Hilton's admission in cross-examination that it was not true since Isaac did not receive USD\$10,000.00 from Hilton or anyone instructed by him. This supported Isaac's assertion that Hilton and Laurie did not give him any money to make the payments to the HDC for the disputed property.
88. In any event, it was not plausible that Hilton and Laurie would have even given any money from the donation collected from Kroger to Isaac to pay for the disputed property since at that time Hilton admitted that the purpose of the money was to use for his and Laurie's living expenses in Kentucky where they were renting and both Hilton and Laurie were not

working. It is more plausible that they would have used it for their living expenses.

89. Hilton also testified that he and Laurie received the sum of USD\$38,055.34 from a road traffic accident and that money was deposited into PNC Bank. There was no evidence from Hilton that any part of the money was given to Isaac to pay to the HDC.
90. Seventh, Isaac was able to offer a reasonable and credible explanation to rebut the contents of the letter from FCB dated 14 June 2018 to Messrs. Ashraph & Ashraph. The said letter was not adduced into evidence either by a hearsay notice or by the maker of it. It indicated that there was an FCB account in the names of Hilton, Laurie, Luke and Rebecca and that the sum of \$17,750.00 was withdrawn from the account on 2 November 2007. It did not state when the monies were deposited into the account and there was no evidence from Hilton concerning the information in the said letter.
91. Although the said letter was disclosed to Isaac after witness statements were exchanged, Isaac explained that when he came to Trinidad he brought the sum for the deposit in US dollars equivalent and he deposited the money ie \$17,750.00 into the FCB account and then the Manager's cheque was drawn. It was put to Isaac by Counsel for the Defendants that this explanation was not plausible since Isaac had an account with RBC so he could have deposited into his RBC account and then withdraw the funds from that account. Isaac indicated that he had problems in obtaining a managers' cheque from his RBC account since his home branch was in Tobago where he had lived in 2004 to 2006.

92. In my opinion, Isaac's explanation was credible since he had testified that he had withdrawn the sum \$220,000.00 from his TECU account on 17 August 2009 and that the HDC was paid with a cheque issued from the same FCB account in the amount of \$220,000.00 on 18 August 2009. It was therefore plausible that Isaac was used to depositing his money into the same FCB account and then cheques were made from that account to pay the HDC. In any event, Hilton had admitted in cross-examination that he was not aware that a deposit for the purchase price of the disputed property was made in November 2007.

#### **The Intention of the Parties**

93. I have also concluded that there was a common intention by Isaac, Hilton and Laurie that the purpose for the purchase of the disputed property from the HDC was as asserted by Isaac, namely that it was to provide a home for Hilton and Laurie to live in Trinidad and that after it was to go to Isaac. I have arrived at this conclusion for the following reasons.
94. Firstly, Isaac's evidence that this was the common intention was not challenged in cross-examination by Counsel for the Defendants.
95. Secondly, Isaac's evidence that this was the common intention was corroborated by the evidence of Ms Jack who was Laurie's sister who shared a close relationship with Hilton and Laurie and their family and whose evidence on this intention was not challenged in cross-examination.
96. Thirdly, from the rival contentions by both parties, Isaac's contention was more plausible given the circumstances of this case. It was not in dispute that Hilton was retired and he could not obtain a mortgage. In 2006, Hilton was a bagger at Kroger, earning USD\$380.00 per week. There is no

evidence of any other monies that Hilton was receiving or had saved. In 2006, Hilton was dependant on donations from customers and workers of Kroger. Laurie was not working at the time. The family tried to have Luke as a co-applicant but that failed.

97. Isaac on the other hand had an income which was healthier than Luke as admitted by Hilton in cross-examination. At the time of the purchase of the disputed property Isaac was married with children and other commitments in Grenada. It is more plausible that Isaac would have only agreed to spend over \$300,000.00 on the disputed property if he knew that it would be his after Hilton and Laurie passed away, and that Hilton's name was on the disputed property because he was the original applicant and the allocation was to him.
98. Thirdly, the Wills supported Isaac's case that he will have the disputed property after Hilton and Laurie passed away since they stated that the disputed property will be given to Isaac upon the passing of Hilton and Laurie.

#### **ORDER**

99. Judgment for the Claimant.
100. It is declared that the Deed of Gift dated 17 July 2017 and registered on 4 August 2017 as DE2017 018106 16D001 in favour of the First, Second and Third Defendants is null and void and of no effect.
101. It is ordered that the Deed of Gift dated 17 July 2017 and registered on 4 August 2017 as DE2017 018106 16D001 in favour of the First, Second and Third Defendants is set aside.

102. It is declared that the Claimant is the beneficial owner of Lot #827 Union Hall, San Fernando Housing Development.
103. The First Defendant is restrained from selling, leasing, gifting, devising and/or otherwise disposing of Lot #827 Union Hall, San Fernando Housing Development during his lifetime to any person other than the Claimant.
104. The Defendants to pay the Claimant's costs of the action in the sum of \$14,000.00 pursuant to Rule 67.5 (2) (b) (iii) Civil Proceedings Rules.

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**Margaret Y Mohammed**

**Judge**