

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-02216

BETWEEN

DEBRA JONES WILLIAMS

(Legal Personal Representative of the Estate of Henry Oliver

Williams otherwise Henry Williams (deceased))

Claimant

AND

JANICE CHARLES WILLIAMS

First Defendant

AND

MARESOIL SANTICA CHARLES

(otherwise Maresoil Charles)

Second Defendant

Before the Honourable Mr Justice Frank Seepersad

Date: September 21, 2020.

Appearances:

1. Mr Frank Peterson, Attorney-at-law for the Claimant.
2. Mr Iforma Soyinka and Ms Gem K.N. Emmanuel, Attorneys-at-law for the First Defendant.
3. Mr Miguel Rawlins instructed by Ms Lyn Lopez, Attorneys-at-law for the Second Defendant.

DECISION

Introduction:

1. Before the Court for its determination is the Claimant's claim as well as the First Defendant's counterclaim and ancillary claim. The Claimant claims against the First and Second Defendant the following:

As against the First Defendant:

- a. A declaration that a resulting trust has been established in favour of Henry Oliver Williams ("the deceased") equivalent to the size of the contribution made by the deceased towards the purchase and/or acquisition of property situate in Trincity, Trinidad (hereinafter called "the Trincity property").
- b. A declaration that no legal and/or equitable joint tenancy existed between the First Defendant and the deceased in respect of the Trincity property.
- c. A declaration that by service of the Notice of Applications and affidavits on the Defendants by the deceased the beneficial joint tenancy in respect of the said property held in the name of the deceased and the Second Defendant had been validly and effectively severed.
- d. An order determining the size and or entitlement of the estate of the deceased.
- e. An order for vacant possession.
- f. Costs.
- g. Such and/or further other relief as may be just.

As against the Second Defendant:

- a. A declaration that the Second Defendant being the sole surviving registered joint tenant on the Certificate of Title in respect of the Trincity property holds the same on a resulting trust for the benefit of the estate of the deceased.
- b. A declaration that the conveyance of the said property into the joint names of the said Second Defendant and the deceased was not intended to be a gift to the Second Defendant.

2. By her counterclaim the First Defendant claimed against the Claimant as follows:

- a. A declaration that by virtue of the Order of the Honourable Madam Justice Dean-Armorer dated May 17, 2006 the First Defendant, as an intended joint tenant, is now the sole owner of the Trincity property.
 - b. Alternatively, that the First Defendant is entitled to an equitable interest in the property known as No. 15 Harvest Crescent, Casselton Gardens, Trincity.
 - c. An injunction restraining the Claimant from selling or disposing of, or in any way whatsoever from dealing with the said property in any manner, which interferes with the interest of the First Defendant.
 - d. Costs.
 - e. Such further and/or other relief as the nature of this case may require.
3. By her ancillary claim instituted against the Second Defendant, the First Defendant sought the following relief :
- a. A declaration that the First Defendant/Ancillary Claimant is beneficially and legally entitled to the Trincity property.
 - b. Alternatively, that the First Defendant/Ancillary Claimant is entitled to an equitable interest in the Trincity property.
 - c. Costs.
 - d. Such further and/or other relief as the nature of this case may require.

The Evidence:

4. The Claimant and First Defendant relied on their own witness statements at the trial.
5. The Second Defendant relied on her own witness statement and the evidence of her daughter, Chanelle Alsop.

Claimant's facts:

6. The Claimant and Henry Williams were married in 2012. Mr Williams died on April 16, 2016. Prior to his death the deceased was a pensioner and was last employed as a crane operator at the Port-of-Spain Port Authority of Trinidad and Tobago.
7. The First Defendant is the mother of the Second Defendant and the former wife of the deceased. The First Defendant resides at No. 15 Harvest Crescent, Casselton Gardens, Trincity ("the Trincity property"). The Second Defendant resides in Barataria.
8. By virtue of a memorandum of lease dated November 23, 1993 the deceased and the Second Defendant were registered as joint lessees of the Trincity property. By virtue of Memorandum of Mortgage dated May 10, 1994 the deceased and Second Defendant secured from the Port Employees Credit Union Co-operative Society Limited the sum of \$192,000.00. This mortgage was subsequently discharged by memorandum of discharge dated October 5, 2004. After its acquisition the deceased and the First Defendant moved into the Trincity property.
9. The mortgage instalments were all paid by the deceased in the monthly sum of \$650.00 via salary deductions.
10. The First Defendant filed divorce proceedings and obtained a decree absolute on April 16, 2012 in FH 01074 of 2005. In relation to the property settlement aspect of the divorce proceedings, on May 17, 2006 it was ordered by consent, *inter alia*, that:
 - a. The matrimonial home situate at No. 15 Harvest Crescent, Casselton Gardens, Trincity, Lot No. 78 now in the joint names of the respondent and Marisol Charles be transferred to the joint names of the petitioner and the respondent to hold as joint tenants. Such transfer to be effected within thirty (30) days. The Registrar of the Supreme Court to sign in default (the consent order).

11. The consent order was never appealed nor set aside but the deceased did not comply with the order and the transfer of the property was not effected. The deceased applied on March 3, 2016 to the Family Court to have the consent order varied so that the parties would hold their respective interest in the Trincity property as tenants in common as opposed to joint tenants. On the same day he filed another notice of application to have the Second Defendant joined as party to those proceedings and called upon her to state whether she had the Certificate of Title for the Trincity property in her possession.
12. After the filing of the said applications and before their determination the deceased died testate on April 16, 2016. On April 27, 2016 the applications were dismissed without a hearing.
13. By virtue of his will which was made and published on August 10, 2012 the deceased appointed the Claimant to be his sole executrix and beneficiary of his share and interest in the Trincity property.
14. The Claimant obtained a Grant of Probate in the deceased's estate on March 10, 2017.

First Defendant's facts:

15. The First Defendant and the deceased were married on August 27, 1999 and prior to their marriage, they lived in a common law relationship for almost 21 years. During the first 10 years they resided at the residence of the First Defendant's mother in Diego Martin.
16. They had one child who was born on December 14, 1984. The First Defendant however had the Second Defendant and another child from a previous relationship.
17. In 1994 the First Defendant and the deceased decided to purchase the Trincity property and upon purchasing it, they moved out from the First Defendant's mother's residence.

18. The purchase of the property was financed by a mortgage. This mortgage was taken in the names of deceased and the Second Defendant (who was 25 years old at the time). The Second Defendant was listed as mortgagee as she was younger than the deceased and her mother, the First Defendant, was not permanently employed. The Second Defendant lived on the property from 1994 to 2002 and she never made any contributions whether direct or indirect to the property.
19. Although the Second Defendant was not party to the divorce proceedings, she was present when the consent order was made.
20. The deceased was unable to comply with the court order because the Second Defendant refused to deliver up the Certificate of Title for the Trincity property.
21. The First Defendant contends that the failure of the deceased and the Second Defendant to comply with the order created a trust in her favour.
22. She also asserts that she has the absolute and sole interest in the Trincity property by virtue of her contributions to same over a 20 year period. She outlined that she has acquired an equity in respect of same premised upon either promissory or proprietary estoppel.
23. Between 1994-2005, the First Defendant stated that she made direct and indirect contributions to the upkeep and maintenance of the Trincity property. She was a housewife and worked part time as a Maid 1 and she outlined that she was often left to manage the household on her own due to the deceased's struggle with alcoholism.
24. The First Defendant also received \$200,000.00 from the deceased pursuant to the property settlement consent order. Thereafter, between 2007-2008 she effected substantial repairs to the Trincity property. These renovations were done with the

knowledge of both the deceased and the Second Defendant and neither of them objected.

25. These repairs, she claims, were effected with the expectation that the property would be transferred pursuant to the terms of the consent order and she wanted to enjoy the use of the property. The First Defendant continues to reside at the property on the belief that she is now the absolute owner of same since she outlived the deceased.

26. On March 22, 2017, the First Defendant wrote to the Second Defendant enquiring about the Certificate of Title for the Trincity property and to date no response was received. The First Defendant caused a caveat to be filed on March 28, 2017 against the property in order to protect her interest.

27. She contends that the filing of the applications to vary the consent order did not sever their joint tenancy.

Second Defendant's facts:

28. The Second Defendant stated that it was through her efforts that she and the deceased entered into a lease agreement with Home Construction Limited with whom she was employed.

29. At the material time, she asserts, that the Trincity property was purchased with the intention that she and the deceased were the joint tenant owners.

30. Although the mortgage was paid from the deceased's salary, there was an arrangement with the deceased, that while he paid the mortgage, she had to purchase groceries and upkeep the home. She also stated that she spent a significant sum of money to build a perimeter wall.

31. Although the Second Defendant acknowledged that she was aware of the divorce proceedings, she said that she was unaware as to the effect of the consent order and had assumed that the order only dealt with the deceased's half share.

32. She said she was a stranger to the circumstances which prevented the deceased from making an application for a duplicate Certificate of Title but that she never withheld same. The Second Defendant stated that her interest in the property remains in effect and maintains that she is a bona fide purchaser.

Issues:

33. The central issues which must be determined in this case are as follows:

- a. Whether the Second Defendant held a half share interest in the Trincity property on trust for the deceased and or the First Defendant.
- b. Whether by virtue of the consent order the half share interest held in the Second Defendant's name was formally transferred to or held on trust for the First Defendant and whether a joint tenancy was thereafter created in the names of the deceased and the First Defendant;
- c. If a joint tenancy was created in the names of the deceased and the First Defendant, whether the 2016 notice of applications made by the deceased severed that joint tenancy;
- d. Whether the First Defendant acquired an equitable interest over the Trincity property and if so what is the extent of that interest.

ISSUE 1: Whether the Second Defendant held a half share interest in the Trincity property on trust for the deceased and or the First Defendant:

34. Honeywell J in **CV2015-01986 Rudolph Mc Clatchie v Dean Benjamin and others** at paragraph 35 and 36 stated as follows:

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. 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.”

35. The law acknowledges that there are certain types of special relationships where an equitable presumption can arise. If X, for example, gratuitously transfers property to Y and a special relationship exists between them and there is no clear evidence of X's intention to the contrary it may be presumed that the transfer was a gift and an

advancement. The parent/child relationship often gives rise to such a presumption.

Underhill & Hayton, Law of Trusts and Trustees 8th ed. states that :

“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.”

36. The law also recognizes that a constructive trust can arise whenever Y has so conducted himself so that it would be inequitable to allow Y to deny X his beneficial interest in the property¹. The constructive trust is imposed so as to give effect to the parties’ expressed or inferred common intention, whether at the time of purchase or subsequently.

37. The “common intention” as to the ownership of a property is established by, 1) agreement between the parties; or 2) by the parties’ conduct in their dealings with respect to 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 agreement². To establish an express agreement, the parties can rely on evidence of discussions “however imperfectly remembered and however imprecise their terms may have been³”.

38. If there is no evidence of express discussions as to an agreement, the Court must examine the conduct of the parties to infer whether there existed a common intention to share the property beneficially and such conduct can give rise to a constructive trust⁴.

39. In **Jones v Kernott [2012] 1 All ER 1265**, the Supreme Court laid down the following principles which outlined that :

¹ Halsbury’s Laws of England (5th Ed.) Vol. 98, para 117

² Underhill & Hayton, Law of Trusts and Trustees, 8th Ed., (2010), para 30.16

³ Lloyd’s Bank plc v Rosset [1991] 1 AC 107

⁴ Underhill & Hayton, Law of Trusts and Trustees, 8th Ed., (2010), para 30.17

- a. The starting point was that equity followed the law and they were joint tenants both in law and equity;
 - b. The presumption could be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change;
 - c. ***Their common intention was to be deduced objectively from their conduct:*** the relevant intention of each party was 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;
 - d. In those cases where it was clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it was not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, the answer was that ***each was entitled to that share which the court considered fair having regard to the whole course of dealing between them in relation to the property. 'The whole course of dealing ... in relation to the property' should be given a broad meaning, enabling a similar range of factors to be taken into account as might be relevant to ascertaining the parties' actual intentions.***
 - e. Each case would turn on its own facts. ***Financial contributions were relevant but there were many other factors which might enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).***
40. Based on the pleadings before this Court there are competing versions of the events relative to the way in which the property allegedly came into the name of the deceased and the Second Defendant. The determination as to the nature of the ownership of the Trincity property is essentially fact dependent. According to the learning in **Horace Reid v Dowling Charles and Percival Bain Privy Council Appeal No. 36 of 1987** 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 against: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions.

41. The Second Defendant in her defence stated at paragraph 4 that it was through her efforts and on her suggestion that the deceased entered into the lease agreement with Home Construction Limited. She further pleaded that there was an arrangement between them that her responsibility was to tend to the needs of the home.
42. In her witness statement filed on September 2, 2019 the Second Defendant stated that she gave the deceased \$500.00 every month towards repayment of the property. She however accepted that she made no direct contribution to the mortgage payments. The Second Defendant also pleaded that her interest in the property is one of a bona fide purchaser for value.
43. During the trial when asked by the Court whether she had a record of the monies which she gave to the deceased and or household or for the construction of the wall she emphatically responded “no”. She outlined that this was so because they were a family and record keeping was not done and she did not expect to be in court for a property in which she co-owned and in which they all lived.
44. The Second Defendant during cross examination also said that she paid the bills which included the electricity bill and the water bill.
45. The First Defendant joined issue with the Second Defendant and denied that she made contributions to the household. This witness also said during cross examination that the Second Defendant was added to the mortgage because of the deceased's age and given

that she (the First Defendant) was unable to do so as she was not permanently employed at that time.

46. The First Defendant further outlined that the Second Defendant was trusted as she was the eldest child in the home. Consequently, the First Defendant insisted that it was in those circumstances that her daughter's name was placed on the legal documents. The intention was to facilitate the required financing.

47. At the trial, the First Defendant engendered in the Court, an unshakeable feeling that she was a witness of truth. She was consistent, her testimony was direct, forthright, compelling and characterized by an air of plausibility. The Court accepted her explanation as to the reason which led to the insertion of the Second Defendant's name on the legal documents. It is clear that this witness trusted her daughter and she also had the Second Defendant accompany her to court during the property settlement hearings. The First Defendant's recall of the material events was pellucid and her general testimony was clothed with the character of credibility.

48. The Court could find no reason which would have justified a decision by the deceased to own the Trincity property jointly with the Second Defendant. The Court found that it was more plausible to conclude that her name was added so as to give efficacy to the mortgage prerequisites, as there would have existed reasonable concerns given the deceased's age at the material time.

49. It is unlikely that a half share in this property was gifted to the Second Defendant. The Second Defendant was not the deceased's biological child and he actually had a child with the First Defendant and that child would have been a minor at the material time. The Court had no evidence before it which supported the existence of a unique or special bond between the Second Defendant and the deceased. There is simply no credible evidence to suggest that there existed an intention to treat with the property as being jointly owned.

50. The Court also rejected the Second Defendant's assertion that she contributed \$500.00 monthly. The First Defendant, her mother, denied this and the Court accepted her testimony. The Court also noted the absence of documentary evidence in support of the Second Defendant's assertion and was unconvinced that she built a wall as alleged. The Second Defendant's testimony instilled a degree of disquiet in the Court's mind. She was at times evasive and in the round, the Court viewed her assertions as suspect, unlikely and improbable.

51. The Court further noted that this defendant moved out of the Trincity property in 2002 and formed the view that her action was inconsistent with a definitive and defined proprietary interest in the Trincity property. The Court further rejected the assertion that it was due to her employ that she was able to facilitate the lease. No evidence was adduced to support this assertion and at its highest, it is probable that the Second Defendant may have merely passed information relative to the fact that the Trincity property was available for lease to her parents.

52. The Court also viewed with suspicion the evidence of her daughter who was far too young, at the material time, to form any of the views expressed in evidence. Her testimony seemed contrived and the Court felt that it was framed to deliberately mislead the Court into accepting the falsified and self-serving narrative proffered by the Second Defendant.

53. The Second Defendant appeared to be sharp, quick and assertive and the Court's impression of her demeanor led the Court to form the view that, the Second Defendant, more likely than not, understood the nature of the consent order. She never objected to same during the hearing and she did not subsequently challenge the order. Her inaction belies her assertion that she viewed herself as owning half of the property as it is reasonable to expect that a co-owner would have been more proactive in defence of her proprietary interest.

54. This Court therefore finds as a fact that the deceased placed the Second Defendant on the legal documentation for the Trincity property because of the his age and the impact of same upon his ability to secure a mortgage.
55. The Court roundly rejected the evidence of the Second Defendant and holds the view that this witness's evidence was fabricated and fashioned with the intent to deceive. The Court further found as a fact that the Second Defendant made no direct financial contribution to the household nor did she contribute towards the acquisition or maintenance of the Trincity property. The position adopted by the Second Defendant is regrettable and betrays the trust which her mother and step father deposed in her, as the eldest child, to act, in the interest of the family unit.
56. Although her name was placed on the legal documents for the Trincity property, that act was done with the clear intention and understanding that same belonged to her parents. It is more likely than not that the Second Defendant always accepted the nature of this arrangement and she is unable to rebut the presumption of a resulting trust having been created in favour of the deceased and her mother. The Court also holds the view that it is probable to conclude, that any contribution (though none was established) which she would have made to the home was done because she, as a working adult, was living in her parents' home rent free and was part of a family unit.
57. In the circumstances having accepted the evidence of the First Defendant, having rejected the Second Defendant's testimony as well as the evidence of her daughter, having subjected the evidence to the test of plausibility and having considered the law, this Court declares that the Second Defendant never had or enjoyed an independent and distinct proprietary interest in the Trincity property. The Court further declares that she, from inception, held a half share interest in same on trust for the deceased and for the First Defendant.

ISSUE 2: Whether by virtue of the consent order, the half share interest held in the Second Defendant's name was formally transferred to or held on trust for the First Defendant and whether a joint tenancy was thereafter created in the names of the deceased and the First Defendant:

58. The Court considered the Court of Appeal's decision in **CA T-269 of 2013 Emlyn Quashie (Administrator Pendente Lite of the Estate of the Deceased Beresford Solomon) and Ayana Solomon.**

59. In the above mentioned case, the appellant was married in 1978 and in 1980 his daughter was born. The marriage ultimately came to an end in 1982 when the parties were granted a decree nisi. The trial judge found that the wife was entitled to a half share in the matrimonial home and a half share in the lot of land on which the home stands. The husband was ordered to convey and complete the conveyance within six months. The husband appealed in 1988 and it was ordered by consent that the husband convey to the wife in trust for the child a half share and interest in the matrimonial property. The parties never complied with the order and the wife later died in 2000. The daughter sought the assistance of the Registrar in 2011 to effect the terms of the order which was executed by deed in 2011.

60. The father brought an action against the daughter seeking to have, *inter alia*, the deed declared null and void and a declaration that the 1988 order was no longer effective as it exceeded the 12 year limitation. The claim was dismissed by the trial judge and the father appealed.

61. Before the Court of Appeal one of the issues was whether the terms of the 1988 consent order created a constructive trust in the daughter's favour.

62. In addressing that issue Pemberton JA at paragraph 44 stated:

44. ... Neither party complied with that order. ***That, to my mind, at once, would have the effect, of making both Ricarda and BS, constructive trustees of the property, for the benefit of AS.*** Can that trust be defeated by the non-compliance with the consent order of the court, whether by Ricarda or BS or both? Put another way, is it equitable to allow both Ricarda and BS to defeat the clear purpose and intent of the consent order, by simply not complying with it, or as in this case, raising the issue of promissory estoppel to defeat AS's counterclaim when they were both in clear breach of the court order?

(Emphasis Court's)

63. The Court at paragraph 47 then cited dicta from Baroness Hale in **Abbott v Abbott [2007] UKPC 53** and from the House of Lords in **Stack v Dowden [2007] UKHL 17** at paragraph 60:

47. ... I would agree with paragraph 4 of the **ABBOT** judgment where Baroness Hale opined that, "the constructive trust is generally the more appropriate tool of analysis in most matrimonial cases" whether in terms of determining whether any party should have a share or interest in the matrimonial home and the proportion of that share and interest. In that regard the modern approach has been stated thus,

"the law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it".

(Emphasis Court's)

64. With reference to the instant proceedings, the effect of the consent order was to mandate that the interest in the Trincity property was to be conveyed in the joint names of the deceased and the First Defendant. It was a directive, by consent, to ensure a formal registration of their joint ownership of Trincity property. This consent order gave effect

to the clear, original and manifest intention of the deceased and the First Defendant that the Trincity property was their matrimonial home. Evidently, the Second Defendant thereafter held half of the property on trust for the First Defendant. The fact that a transfer was not effected is of little moment and from the date of the consent order, the joint ownership of the parties was acknowledged by the court. The failure to formally effect the transfer, cannot and did not circumvent or defeat the intent of the consent order.

65. The consent order to date remains operative.

66. This Court is therefore resolute in its view that by virtue of the consent order the law recognized and acknowledged that the interest in Trincity property was held jointly by the deceased and the First Defendant, as joint tenants.

ISSUE 3: Whether the 2016 notice of applications made by the deceased severed such joint tenancy:

67. The law as it relates to a joint tenancy is quite clear. Joint tenants hold property equally and there exists a single unit of ownership. The author of **Commonwealth Caribbean Property Law 2nd Edition at page 117** states that:

"A joint tenancy occurs where land is conveyed or devised to two or more persons without 'words of severance' ..."

For a joint tenancy to exist what is known as the four unities must all be present. These unities are the unities of possession, interest, title and time. Essentially each joint tenant has equal rights to possess any part of the land and each has an interest which is identical as it pertains to the whole land.

68. The right of survivorship (or *jus accrescendi*) is the 'grand and distinguishing incident of joint tenancy'. By the right of survivorship, the entitlement of each joint tenant is eliminated upon death. This right takes precedence over any testamentary disposition made by a joint tenant.

69. **Halsbury's Law of England Volume 87 (5th Edition), paragraph 203** states that:

"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 and possessed of the whole. If there were more than two, the survivors continue to hold as joint tenants. The incident which is called the '*jus accrescendi*', is the most important feature of joint tenancy."

70. The law recognizes that the right of survivorship, however, may be destroyed, by a severance of the joint tenancy effected during the lifetime of the joint tenant. To take effect, severance of at least one of the essential unities is required. When this occurs, the joint tenancy is converted into a tenancy in common and each party is thereafter entitled to a distinct share.

71. In **Williams v Hensman (1861) 70 ER 862, 867**, Page Wood VC identified three circumstances which can effect a severance:

- a. act of a joint tenant 'operating upon his own share';
- b. mutual agreement; and
- c. course of dealing (mutual conduct).

72. There is authority for the proposition that the formal commencement of litigation concerning a joint tenancy may be viewed as 'an act operating on the share' of the joint tenant.

73. In **CV2017-01825 Tenille Hepburn and another v Eleanor Lourenco So'Brien** this Court had to determine whether the joint tenancy which existed between a husband and wife (defendant) was severed, either by the lease which the husband effected or due to the course of conduct engaged by the parties and the positions which they adopted and declared during their divorce proceedings.

74. At paragraph 12 this Court stated:

12. A joint tenancy requires the existence of the four unities, namely, the unities of possession, interest, time and title. Where any of the unities is displaced, there can be no joint tenancy.

75. This Court at paragraph 25, 26 and 27 then cited the English decision **Re Draper's Conveyance [1969] 1 Ch 486** as follows:

25. In **Re Draper's Conveyance [1969] 1 Ch 486, ChD**, a husband and wife were joint tenants of their matrimonial property. The parties' relationship took a turn for the worse and as a result the wife filed divorce proceedings. The wife issued a summons under s17 Married Women's Property Act 1882 requesting that the house be sold and the proceeds split between them. In support of the summons the wife swore an affidavit providing that that the proceeds be distributed equally, or in the alternative the husband would pay her one half of the value of the matrimonial home. An order for possession and sale was granted by the court. However, the husband died before the divorce proceedings were finalized. The husband's children sought the court to rule that the joint tenancy had been effectively severed in the circumstances.

26. The court formed the view that the joint tenancy had been effectively severed. The issue of a summons and the sworn affidavit indicated a clear and immediate intention to sever the joint tenancy.

27. The wife's unilateral declaration of her intention was communicated to her husband through the summons and affidavit."

76. The Court having considered the aforementioned case, holds the view that the 2016 applications which were filed by the deceased, whereby he unequivocally sought to vary the terms of the consent order, had the conjoined effect of severing the joint tenancy. The institution of the said applications amounted to a clear, certain and definitive expression of the deceased's intention to sever the joint tenancy.

77. The adduced evidence as reflected in the First Defendant's testimony also demonstrates that the deceased had prior to his departure from the matrimonial home, mapped out the part of the house where he was living. The deceased and the First Defendant after their divorce, occupied defined portions of the Trincity property over which they each exercised dominion. This demarcation also amounted to a sufficient act of severance and the unity of possession was impacted. Accordingly, the First Defendant did not automatically become the sole owner of the Trincity property as the joint tenancy created under the consent order was severed. Consequently, prior to the deceased's death, they each held their respective interest in the Trincity property as tenants in common.

ISSUE 4: Whether the First Defendant has an equitable interest in the property and if so what is the extent of that interest:

78. The law on proprietary estoppel is well settled. To properly plead a case premised upon a proprietary estoppel, a claimant must set out three elements; a representation or assurance, reliance upon that representation or assurance and an ensuing consequential detriment.

79. The First Defendant pleaded that the deceased's failure to give effect to the consent order created a trust in her favour (see paragraph 8 and 9 of the First Defendant's defence filed July 28, 2017). She also claimed that she acquired an interest in the entire property based

on her contributions over a 20 year period and her expenditure to effect repairs to the Trincity property, after the divorce.

80. Halsbury's Laws of England notes that there is much common ground between proprietary estoppel and the constructive trust⁵. A cause of action in proprietary estoppel arises when X makes a representation to Y concerning property and Y has relied upon same to his detriment which would now make it unconscionable for X to resile from that earlier representation⁶. The court should ensure that it inquires, *inter alia*, into i) whether an equity arises in Y's favour out of the conduct and relationship of the parties; ii) the extent of the equity; and iii) the relief which is appropriate to satisfy any established equity.

81. The First Defendant has been living at the Trincity property since the house was bought in 1994. There is no doubt that she contributed towards the upkeep of same as she operated as a working wife, homemaker and mother.

82. The First Defendant pleaded that her expectation, was that, the deceased and the Second Defendant would have transferred the property into her name and the name of the deceased as joint tenants. After the property settlement, the deceased and the First Defendant each carved out their own space in the Trincity property as they lived and exercised control over distinct and separate portions of same. This Court accepts that the First Defendant after her divorce used the \$200,000.00 she received from the property settlement and effected extensive renovations to the premises (paragraph 11 of First Defendant's Defence and paragraph 21 of her witness statement). After the deceased left the premises in 2012, upon his remarriage, she was solely responsible for the upkeep of the property. The evidence before the Court does not suggest that the deceased played any role in the upkeep of the property, post 2012.

⁵ Halsbury's Laws of England (5th Ed.) Vol. 98, para 120

⁶ Halsbury's Laws of England (5th Ed.) Vol. 47, para 392

83. The First Defendant was acknowledged as a co-owner of the property under the consent order and although no formal transfer was effected, in equity, she had a clear and ascertainable interest in the property. When the First Defendant used her divorce settlement and effected repairs to the structure, the deceased did not stop her and she was allowed to continue in her old age to make investment into the Trincity property. It is likely and probable that she operated in this manner, as she expected that for the rest of her natural life, the Trincity property was her home given that all her legal issues with the deceased had been resolved. Based on her substantial expenditure post the divorce, the First Defendant acquired an equitable interest in the property. This interest subsists and is distinct from her established half share in the Trincity property which was reflected in the consent order. Having so concluded, the Court must now determine the extent of this interest and has to quantify the minimum equity so as to ensure that she is treated justly.

84. In **Theresa Henry and another v Calixtus Henry [2010] UKPC 3** the Privy Council laid down the following guidelines in cases of proprietary estoppel:

- i. The court should adopt a cautious approach.
- ii. The court must consider all of the circumstances in order to discover the minimum equity to do justice to the claimant.
- iii. The court however enjoys a wide discretion in satisfying an equity arising from proprietary estoppel.
- iv. ***Critical to the discovery of the minimum equity to do justice, is the carrying out of a weighing process; weighing any disadvantages suffered by the claimant by reason of reliance on the defendant's inducements or encouragements against any countervailing advantages enjoyed by the claimant as a consequence of that reliance.***
- v. In determining the balance in the relationship between reliance and detriment: just as the inquiry as to reliance falls to be made in the context

of the nature and quality of the particular assurances, inducements and encouragements which are said to form the basis of the estoppel, so also the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on the assurances, inducements and encouragements. (Emphasis Court's)

85. The Court must therefore engage in a balancing exercise and has to weigh the disadvantages suffered by the First Defendant as against the advantages which she enjoys. The Court notes that the First Defendant did not become the sole owner of the matrimonial home pursuant to the consent order but she held her interest jointly with the deceased. At the time the consent order was entered she must have understood that she did not own the property solely and would only be the absolute owner if the deceased predeceased her. The starting point must therefore commence from a half and half share perspective, as between her and the estate of the deceased.
86. Following the divorce, her receipt of the settlement of \$200,000.00 must have been significant given her age and the nature of her employment. She however chose to invest substantial sums, in effecting repairs and improvements to the property. It is probable to conclude that she did so because she operated from the perspective that the Trincity property was her home, for life.
87. The First Defendant is now an elderly and this property is her home. The deceased moved out in 2012 and for nearly four years, thereafter, took no steps to realize a distinct interest by formally severing the joint tenancy in the Trincity property. The applications were filed shortly before his death and from the evidence the Claimant never lived in same nor were the collective assets which she enjoyed with the deceased utilized to improve or maintain the Trincity property. Post 2012, the First Defendant bore the sole responsibility for the upkeep and maintenance of the property. These are all factors which are favorable to the First Defendant.

88. The First Defendant has no other place to reside and given her age and the limitations of her earning capacity as a pensioner, it is unlikely that she now will qualify for a mortgage. An evident measure of uncertainty, readjustment and discomfort would befall her, if the Trincity property has to be sold and she is required to purchase or find a new home.
89. On the other hand, the deceased had an interest in the property, he paid each mortgage payment and his estate is now entitled to benefit from his investment. Notably however, the Claimant, as the deceased's beneficiary, has accommodation of her own.
90. In these circumstances, the Court is of the view that the justice of this case and the minimum equity established on the evidence must be quantified so as to give to the First Defendant an additional 15% interest in the property.
91. The Court however holds the view that it will be unconscionable to now deprive the First Defendant of the peace, security and familiarity of her home given her stage in life. Consequently, the Court is of the view that this additional 15% interest which the First Defendant has acquired would best be satisfied by ensuring that she is given the security of living in her home until her death. Upon her death the interest of the deceased can be realized.
92. Accordingly, the Court declares that the First Defendant shall be permitted to occupy the Trincity property for and during her natural life. Upon her death her additional 15% equitable interest would have been satisfied. Thereafter, her estate will be entitled to a half share interest in the Trincity property and the Claimant (or her estate) to the other half interest. Within 60 days after the First Defendant's death, the market value of the Trincity property is to be ascertained by a recognized and established valuator. The cost of same shall be borne by the First Defendant's estate. Within 60 days of the obtaining of the said valuation report, the First Defendant's estate shall pay to the Claimant or to her estate (if applicable) 50% of the market value of the Trincity property. In default the

Trincity property is to be sold and the required payment shall be made to the Claimant or to her estate. The Registrar of the Supreme Court shall be empowered at the material time, if a sale is required, to execute any agreement for sale for the Trincity property and shall also be empowered to execute the required memorandum of lease.

93. On the claim and counterclaim each party is to bear their respective legal costs and on the ancillary claim the Ancillary Defendant is to pay to the Ancillary Claimant costs in the sum of \$14,000.00.

94. For the reasons outlined the Court hereby issues the following declarations and orders:

- a. The Court declares that the Second Defendant held a half share interest in the Trincity property on trust for the deceased and the First Defendant.
- b. By virtue of the consent order the Second Defendant thereafter formally held half of the property as a constructive trustee for the First Defendant and the interest in Trincity property was from the date of the consent order effectively held by the deceased and the First Defendant, as joint tenants.
- c. The joint tenancy which was established by virtue of the consent order between the deceased and the First Defendant was severed by the deceased. Thereafter the First Defendant and the deceased held their respective half share interest in the Trincity property as tenants in common.
- d. The First Defendant acquired a further equitable share and interest in the property which has been quantified as an additional 15% share of the Trincity property.
- e. The Court further declares that the First Defendant shall be permitted to occupy the Trincity property for and during her natural life. This life interest shall then satisfy the additional 15% interest and upon her death, her estate and the Claimant or her estate, will each be entitled to a 50% interest in the Trincity property .
- f. The Court also directs that within 60 days after the death of the First Defendant, her estate shall determine the market value of the Trincity property situate at No.

15 Harvest Crescent, Casselton Gardens Trincity. The said valuation is to be determined by a recognized and established valuator and the cost of same shall be borne by the First Defendant's estate.

- g. It is also declared that within 60 days of obtaining the said valuation, the First Defendant's estate shall pay to the Claimant or to her estate (if applicable) 50% of the market value of the Trincity property and in default the property is to be sold and the required 50% of the proceeds of sale shall be made to the Claimant or her estate.
- h. The Registrar of the Supreme Court shall be empowered at the material time if a sale is required, to execute any agreement for sale of the Trincity property as well as any required deed of lease.
- i. The Second Defendant is directed to produce on or before 4:00 pm on September 28, 2020 the Certificate of Title for the Trincity property. The First Defendant's attorney shall prepare the requisite memorandum as to convey the half share interest in the Trincity property held by the Second Defendant to the First Defendant and in default of the Second Defendant executing same the Registrar of the Supreme Court shall be empowered to execute same. The cost of the transfer is to be borne by the First Defendant. The Claimant shall also be entitled to have access to the said Certificate of Title so as to register a memorandum of assent in relation to the deceased's half share of the Trincity property.

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FRANK SEEPERSAD
JUDGE