THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2018/0008

BETWEEN

ROBERT OWEN HAYNES

Appellant

and

PATRICIA EUDORA WELSH

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis	Justice of Appeal
The Hon. Mr. Eddy D. Ventose	Justice of Appeal
The Hon. Mde. Esco L. Henry	Justice of Appeal

Appearances:

Mr. Leon Charles for the appellant
Ms. Midge A. Morton for the respondent

2024: November 12;
2025: March 13.

Civil appeal – Constructive trust – Beneficial interest of a property – Ancillary relief – The Matrimonial Causes Rules – The Divorce Act – Property Adjustment following separation or divorce – Whether the learned trial judge erred in law in finding that there was evidence that the parties intended to share the beneficial interest in the matrimonial home otherwise than in equal shares – Whether the learned trial judge was correct in ordering the appellant to pay the respondent 50 per cent of the purchase price of the Vehicle

The appellant and the respondent were married on 16th May 1998 and divorced approximately sixteen years later on 7th February 2014. The effective date of the divorce was on 10th March 2014. On 23rd November 2015, the respondent by way of a notice of application for ancillary relief (pursuant to the Matrimonial Causes Rules and common law of trusts) sought several orders but mainly in relation to the interests of the parties in the former matrimonial home and a Nissan Navara pickup (the "Vehicle").

The application for ancillary relief came on for hearing before the learned trial judge on 8th and 25th January 2016. In June 2010 construction of the matrimonial home commenced on the land at Frigate Bay and was completed in 2011. The respondent stated that the construction of the matrimonial home was financed from two loans, the first, a commercial loan, from Canadian Imperial Bank of Commerce/First Caribbean International Bank (CIBC/FCIB) in the sum of EC$610,000.00 and the second, a staff loan from her employer, the ECCB, in the sum of EC$400,000.00. The respondent also stated that her duty-free status as a senior employee at ECCB reduced the costs of furniture, household appliances and fixtures that were purchased overseas. The respondent asserted that she had paid a major portion of the mortgage on the matrimonial property ("the Property"), the certificate of title to which is jointly held in the names of both the respondent and the appellant. Consequently, the respondent contended that she had a greater interest in the matrimonial home than the appellant because she contributed more to the acquisition of the matrimonial home than the appellant.

The respondent also gave evidence that she paid for the Navara pickup (the "Vehicle") that the appellant drove and that the market value of the Vehicle of approximately EC$110,000.00 should be deducted from any amount that may be due to the appellant or that the Vehicle be sold and the corresponding loan paid.

The appellant gave evidence that detailed his financial and domestic contributions during the marriage. He claimed significant financial contributions towards the matrimonial home, including completing construction, paying bills, and purchasing materials. He also highlighted his role as the primary caregiver, managing household chores and childcare while his spouse pursued her career. He disputed the respondent's valuation of the matrimonial home and detailed his payments towards the vehicle, arguing it should not be sold due to its use in his business. Furthermore, the appellant argued that his contributions, both financial and domestic, were substantial and should be considered in any financial settlement.

On 1st May 2018, the learned trial judge gave her written judgment where she found *inter alia* at paragraph 63 that: (c) the Petitioner is entitled to a 70% share in the matrimonial property. The Respondent is entitled to a 30% share in the matrimonial property; (d) the property shall be valued by a reputable and independent valuator to be agreed upon by the parties within one month of the date of this order; (f) the Petitioner shall be at liberty to purchase the Respondent's 30% share in the net value of the matrimonial property, taking into account the amount of the outstanding mortgage and maintenance arrears within three (3) months of the date of this order. The Respondent shall be permitted to remain in the matrimonial property until receipt of the value of his 30% share in the net value of the property; and (i) that each party will retain usage of the vehicles in their possession and that the appellant will pay to the respondent 50% of the purchase price of the vehicle which he had retained, such price to be deducted from his entitlement at paragraph (c).

On 13th June 2018, the appellant filed a notice of appeal against the judgment with seven grounds of appeal. The issues that arose in this appeal based on the grounds of appeal are as follows: (1) whether the learned trial judge erred in law in finding that there was evidence that the parties intended to share the beneficial interest in the matrimonial home otherwise

than in equal shares; and (2) whether the learned trial judge was correct in ordering the appellant to pay the respondent 50 per cent of the purchase price of the Vehicle.

Held: allowing the appeal, setting aside the decision of the learned trial judge and making the orders at paragraph 61 that:

1. When a notice of application for ancillary relief is made to the court pursuant to the **Matrimonial Causes Rules**, the applicable law is the common law since the **Divorce Act** of Saint Kitts and Nevis does not provide a statutory basis on which any claims for property adjustment or settlement can be made.

   The **Matrimonial Causes Rules** (1937 No. 1113) applied; The **Divorce Act** Cap 12.03 of the revised Laws of Saint Christopher and Nevis considered.

2. Concerning the case of a house transferred into the joint names of a married or unmarried couple, where both are responsible for any mortgage, and where there is no express declaration of their beneficial interests, the starting point is that equity follows the law, and they are joint tenants both in law and in equity. That presumption, however, can 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. Common intention is to be deduced objectively from their conduct and in cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is 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, each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property.

   Jones v Kernott [2011] UKSC 53 applied**; Stack v Dowden** [2007] 2 AC 432 applied; **Fowler v Barron** [2008] EWCA Civ 377 considered.

3. On the evidence and findings of the learned trial judge, there was no evidence that the appellant and the respondent did not intend a joint tenancy at the outset. Similarly, there was no evidence before the learned trial judge that the appellant and the respondent had changed their original intention to share the beneficial interest equally. Having found that there was no evidence of express or inferred intention, it meant that equity follows the law, and the presumption that appellant and the respondent are joint tenants both in law and in equity, was not displaced.

   Jones v Kernott [2011] UKSC 53 applied.

4. Although the learned trial judge did not use the term 'resulting trust', her focus exclusively on the financial or other contributions to the Property lead to the conclusion that she erred in her finding that the significantly greater financial contribution made by the respondent should be reflected in according the respective beneficial interest of the parties in the matrimonial property. It was not disputed that

the respondent had a higher earning power than the appellant. The evidence before the learned trial judge was that the respondent contributed financially more to the cost of acquiring and constructing the matrimonial home and the respondent paid more in mortgage payments than the appellant. The decision in **Stack v Dowden** however makes clear that the court must have regard to all the circumstances which may shed any light on the shared intentions of the appellant and the respondent concerning ownership of the Property. The critical factor is not only the parties' financial contributions. The learned trial judge therefore erred by failing to consider all the circumstances which would throw light on the shared intentions of the parties. The focus should not have been on the fact that the parties made unequal contributions to the cost of acquiring the Property but the inferences that should have been drawn concerning the shared intentions to be derived from an overall evaluation of the evidence.

Stack v Dowden 2007] 2 AC 432 applied.

5. The sole ground upon which the presumption of equal beneficial interests could have been challenged was that the appellant and respondent intended to share the property's beneficial interest in proportion to their financial contributions. As this challenge failed, the default of equal beneficial interests remained, meaning the appellant and respondent shared the property equally, both legally and equitably. The court's authority to intervene rests on the parties' common intention, whether explicitly stated or implied. The trial judge therefore erred by focusing solely on financial contributions and adopting an overly narrow perspective.

JUDGMENT

[1] **VENTOSE JA:** This appeal raises once again interesting legal questions about the scope of the common intention of constructive trust when determining how the beneficial interest of a property should be shared between a husband and a wife following separation or divorce.

The Factual Background

[2] The appellant and the respondent were married on 16th May 1998 and divorced approximately sixteen years later on 7th February 2014. The effective day of the divorce was on 10th March 2014. There are two children of the marriage who are both now over 18 years. On 23rd November 2015, the respondent by way of a notice of

application for ancillary relief (pursuant to the **Matrimonial Causes Rules**[1] and common law of trusts) sought the following orders: (1) a declaration as to what interest the appellant has in the former matrimonial home; (2) an order that the extent of the respondent's interest in the former matrimonial home be determined by the court; (3) a declaration that the respondent's equitable and legal interest in the former matrimonial home is in an amount determined by the court to be greater than half of the appellant notwithstanding the fact that the legal title is in the joint names of the respondent and the appellant; (4) an order that the respondent pay out the appellant his interest in the former matrimonial property as determined by the court; (5) an order that the appellant vacate the former matrimonial home within one (1) month of this order; (6) an order that the property be transferred to the respondent and the appellant sign a memorandum of transfer required for effecting the transfer in favour of the respondent; (7) an order that the appellant reimburse the respondent for repaying the overdrawn account at the Canadian Imperial Bank of Commerce/First Caribbean International Bank in the sum of EC$35,414.82; (8) an order that the respondent is entitled to the furnishings and furniture bought by her and which are presently in the former matrimonial home; (9) an order that the Nissan Navara pickup be sold and the proceeds of sale be given to the respondent to repay the balance outstanding on the loan; (10) an order that open market value of the Nissan Navara pickup being EC$100,000 be deducted from the amount due to the appellant; (11) costs to the respondent; and (12) such further and other relief as the Honourable Court may deem just.

[3] The application for ancillary relief came on for hearing before the learned trial judge on 8th and 25th January 2016. At the hearing, the respondent gave evidence that in 1998 when she was married, she was an economist at the Eastern Caribbean Central Bank (ECCB) and earned a salary of EC$5,558.75 inclusive of housing allowance and that the appellant was a sales representative and that his salary was approximately EC$1,900.00 a month. The respondent stated that in August 1999 she and the appellant jointly purchased a property (a parcel of land) at Bladen Housing

[1] 1937 No.1113.

Development, Basseterre, St. Kitts for the sum of EC$58,000.00 from proceeds of a loan from the Royal Bank of Canada ("RBC"). The respondent also stated that she paid the legal costs and stamp duty in the sum of EC$7,098.60. She gave evidence that both parties sold that property for the sum of EC$90,750.00. In 2005, the parties bought land at Frigate Bay for EC$137,000.00, using: (1) EC$37,000.00 from the net proceeds from the sale of the parcel of land at Bladen Housing Development; and (2) a loan of $100,000.00 from RBC for which the respondent was responsible for paying the sum of EC$2,464.83 per month.

[4] In June 2010 construction of the matrimonial home commenced on the land at Frigate Bay began and was completed in 2011. The respondent stated that the construction of the matrimonial home was financed from two loans, the first, a commercial loan, from Canadian Imperial Bank of Commerce/First Caribbean International Bank (CIBC/FCIB) in the sum of EC$610,000.00 and the second, a staff loan from her employer, the ECCB, in the sum of EC$400,000.00. The respondent also stated that her duty-free status as a senior employee at ECCB reduced the costs of furniture, household appliances and fixtures that were purchased overseas. The respondent asserted that she had paid a major portion of the mortgage on the matrimonial property, the certificate of title to which is jointly held in the names of both the respondent and the appellant.

[5] The respondent stated that she had a greater interest in the matrimonial home than the appellant because she contributed more to the acquisition of the matrimonial home than the appellant and that between 2011 and 2015, she paid approximately EC$403,366.15 in mortgage payments for the matrimonial home. She also stated that before payments on the mortgage commenced, construction/mortgage interest payments were deducted from her savings account. The respondent gave evidence that she also paid for the Navara pickup (the "Vehicle") that the appellant drove and that the market value of the Vehicle of approximately EC$110,000.00 should be deducted from any amount that may be due to the appellant or that the Vehicle be sold and the corresponding loan paid. The respondent also itemised other payments such as: (1) legal fees and stamp duty for the purchase of the land at Bladen Housing

Development; (2) deposits to the CIBC/FCIB loan account amounting in total to EC$45,000.00; (3) payments of interests to the bridging loan and other costs amounting in total to EC$36,050.81; (4) property insurance for the matrimonial home amounting in total to EC$15,370.20; (5) installation of a security system amounting in total to EC$6,043.16; (6) air conditioning unit at a cost of EC$3,151.00; (7) electrical and plumbing work at a cost of EC$2,000.00; (8) purchase of appliances at a cost of EC$2,703.23; (9) purchase of appliances via credit card at a cost of EC$13,500.00; and (10) purchase of furniture at a cost of EC$75,821.55.

[6] The respondent stated that she paid a monthly mortgage payment of EC$7,333.93, commencing April 2011 which was deducted from her savings account at CIBC/FCIB with no contribution from the appellant except for December 2012 to June 2013 and two other payments in December 2013 and January 2014. The respondent also stated that she was responsible for clearing an overdraft of EC$34,171.13 on the appellant's chequing account and incurred additional costs of furnishing the matrimonial home in the amount of EC$30,604.66 in addition to those mentioned above. The furnishings were financed through a loan from FINCO in the total amount of $ EC84,217.47 and that in January 2015 the respondent paid the outstanding balance of EC$20,068.52 on the loan. She also stated that she cashed in on an endowment policy of EC$15,000.00 to assist with the purchase of items for the matrimonial home. The respondent stated that when the appellant was not working, she provided financially for the children of the marriage and since the appellant returned to St. Kitts after seeking medical attention overseas, she has contributed solely to all household expenses and maintenance of the matrimonial home.

[7] The respondent stated that the appellant made a contribution of EC$25,000.00 towards the purchase of the matrimonial home and that when the matrimonial home was being constructed, the appellant paid for: (1) a 40 foot container; (2) the cost of constructing a small concrete room/shed in the yard; (3) painting the outside verandas and the garage; and (4) landscaping of the grounds and purchased most of the trees.

[8] Mr. Trevor Cornelius gave evidence that he was contracted by the appellant to complete the painting of the matrimonial home.

[9] The appellant gave evidence that in 1994 he received a monthly salary of EC$2,500.00 plus sales commission of approximately EC$750.00 to EC$1,900.00 per month as an Assistant Manager at Delisle Walwyn. The appellant stated he was made redundant from that job in 2001 but obtained another job three months later as a Storeroom Manager at FB Armstrong. The appellant also stated that he is a qualified construction contractor and has been in business for approximately eight years as Haynes and Associates. He continued that he went overseas for surgery in 2014 and since his return has been trying to get the business up and going again and that from an advance from a project he was about to start, he was able to make a payment in the sum of EC$10,000.00 in October 2015 towards the arrears of maintenance of the children of the marriage.

[10] In respect of the Vehicle, the appellant's evidence was that the cost of the Vehicle was approximately EC$105,000.00 and that the respondent paid about EC$13,000.00 toward the cost of the Vehicle but this was made towards the end when the loan for the Vehicle was paid off. He was responsible for paying for the Vehicle and the respondent was responsible for paying for the land. The appellant stated that he contributed EC$450.00 per month in two equal installments towards the purchase of the land at Frigate Bay. The appellant also stated that while the respondent worked and was promoted over the years, he was responsible for taking care of the family home and the children of the marriage during those years, including taking the children to school and church, purchasing food for the home, cleaning the house 2-3 times a week, paying for the gardener.

[11] The appellant stated that he contributed to finishing the construction of the matrimonial home when the contractor left and used the EC$70,000.00 left on the construction loan to finish the entire house and that he used his own resources and money to complete the construction. The substantial amount spent on furniture for

the matrimonial home was because of the respondent's insistence that there should be furniture for the new house. The appellant also stated that he made contributions to the matrimonial home in the form of: (1) purchase of groceries and payment of bills; (2) paid the sum of EC$4,000.00 for about nine months as ordered by the court towards household expenses including mortgage payments and utilities; (3) the sum of EC$5,100.00 for moldings for the matrimonial home; (4) the sum of EC$10,708.69 for home insurance for 2013; (5) payment of home insurance for three years. The appellant also outlined his contributions in the form of paying for trucking during construction, project management for the construction, project quantities, landscaping, contractor fees, equipment rental and cleanup, painting, electrical finishes on parts of the house, lump sum payment of EC$25,000.00 upfront into the mortgage account, receipt of materials amounting to approximately EC$28,000.00 free of charge from Contec in the form of concrete, blocks and cement.

[12] The appellant stated that the value of the Vehicle was EC$75,000.00, that it was six years old and that it should not be sold as it is used for the purposes of his business. The appellant also stated that before the loan for the Vehicle was absorbed into the mortgage, he paid approximately EC$15,000.00 to EC$20,000.00 towards the Vehicle loan. The appellant continued that the overdrawn account was closed without his knowledge and that he could not contribute to clearing it as he was not working at the time as his projects had ended. He also stated that that account was used mainly in finishing the house. The appellant denied that the value of the matrimonial home was EC$1,233,806.00 as contended by the respondent but that it was valued at approximately EC$3.4 million in 2013.

The decision in the court below

[13] As mentioned earlier, the hearing of the application took place on 8th and 25th January 2016 and over two and a half years later, on 1st May 2018, the learned trial judge gave her written judgment of 12 pages. The learned trial judge applied the decision of the House of Lords in **Stack v Dowden**:[2]

[2] [2007] 2 AC 432.

> "56 Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest."

[14] The learned trial judge also quoted at para [4], part of para [69] from **Stack** (see below at para [21] of this judgment) but wrongly attributed it to the decision of the Privy Council in **Abbott v Abbott**.[3] From paragraphs [5] to [10] of her written judgment the learned trial judge summarised some of the applicable principles from the decisions in **Stack** and **Abbott**. The learned trial judge then outlined the evidence of the respondent (at paras [11] to [19]), the appellant (at paras [20] to [35]) and the evidence of Trevor Cornelius (at paras [36] to [37]). At paragraph [38] of her written judgment, the learned trial judge commenced her findings by stating that she was unable to accept the evidence of the appellant as representing the true position of the parties in the case, because of: (1) his evasive testimony; (2) his excuses as to why he was unable to provide documentary evidence when confronted with the documents of the respondent; (3) he was not able to provide any documentary evidence to support most of his assertions. The learned trial judge found at para [39] that the appellant was not as intimately connected with the financing and construction of the matrimonial home as he tried to convey to the court. She noted that the respondent accepted in evidence that the appellant contributed to other areas and was involved in the construction of the matrimonial home.

[15] The learned trial judge observed at para [41] that the appellant was trying to bolster unsuccessfully the extent of his financial and other contributions. She continued that the appellant was not employed in a professional capacity as the respondent and found as a fact that the appellant did not receive the level of income that he suggested, especially in the early years of the marriage so that he could not have supported the respondent to the extent that he portrayed in his evidence at trial. The

[3] [2007] UKPC 53; (2007) 70 WIR 1.

learned trial judge at para [42] rejected the appellant's evidence that he was the major contributor to bills for the maintenance and upkeep of the home or that he spent up to EC$800.00 per month while the respondent only contributed maybe EC$100.00. The learned trial judge continued that even if this were true, the fact that the respondent contributed up to seventy percent of the total for the utility bills coupled with her payments for the mortgage and other loan gives an indication of the significant contribution that she made.

[16] The learned trial judge stated at para [43] that she is mindful of the principles applied in **Gissing v Gissing**[4] when seeking to ascertain the extent of a spouse's contribution where there is no evidence of an express agreement as to how that share is to be quantified, citing the following passage from **Gissing** at p 908:

> "In such a case the court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse upon which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently."

[17] The learned trial judge then went on to state that "[n]either party has suggested that there was any understanding or formulation at the time or acquisition or during the course of the construction of the matrimonial home". The learned trial judge explained at para [44] that the court in **Gissing** at p 908 continued that, "[f]urther the court went on that: "It is only if no such inference can be drawn that the court is driven to apply as a rule of law, and not as an inference of fact, the maxim "equality is equity", and to hold that the beneficial interest belongs to the spouses in equal shares".

[18] The learned trial judge then stated at para [45] that she noted the further definition of these principles where the court in **Gissing** went on to state at 897 that: "I think that the high-sounding brocard "equality is equity" has been misused. There will of course be cases where a half-share is a reasonable estimation, but there will be many others

[4] [1971] AC 886.

where a fair estimate might be a tenth or a quarter or sometimes even more than a half."

[19] The critical reasoning of the learned trial judge is found in the following two paragraphs:

> "[46] I have listened to both parties' evidence and considered the documentary evidence as well as Counsel's submissions. It is not for the Respondent to prove that he is entitled to 50% equitable interest in the matrimonial property. It is the Petitioner who asserts that she should have more than 50% and all the authorities are clear that the onus on her to prove why she should be so entitled. There is no evidence of express or inferred intention however imperfectly remembered or however imprecise their terms may have been. In the absence of same the parties' whole course of conduct in relation to the matrimonial property including their financial contributions and or/other contributions and how the property was financed or purchased both initially and subsequently lean to a conclusion that the significantly greater financial contribution made by the Petitioner should be reflected in according the respective beneficial interest of the parties in the matrimonial property.
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> [47] I bear in mind that the Petitioner's steady substantial income meant that in real terms the actual amount that she invested in the home would be greater than the Respondent who was not in steady employment for significant portions of the relevant period. However, I balance that against the percentage of that income or interest that went directly into the home from the reduced interest rates on the mortgage loan, duty free concessions for furniture and fittings, that the mortgage loan payments have been made solely by her throughout the entire period while maintaining and contributing significantly to the household expenses and the children of the marriage. For these reasons the Petitioner is entitled a beneficial interest of 70% interest in the matrimonial property. The respondent to the remaining 30%."

[20] The learned trial judge at para [63] then ordered as follows:

> "…
> (c) The Petitioner is entitled to a 70% share in the matrimonial property. The Respondent is entitled to a 30% share in the matrimonial property.
> (d) The property shall be valued by a reputable and independent valuator to be agreed upon by the parties within one month of the date of this order.

(e) The amount of the maintenance arrears as at the date of this Order are to be deduced from the amount of the Respondent's equity in the value of the property.

(f) The Petitioner shall be at liberty to purchase the Respondent's 30% share in the net value of the matrimonial property, taking into account the amount of the outstanding mortgage and maintenance arrears within three (3) months of the date of this order. The Respondent shall be permitted to remain in the matrimonial property until receipt of the value of his 30% share in the net value of the property.

(g) If the Petitioner is unable to purchase the Respondent's share of the property within the time stipulated as above, the Respondent shall be at liberty to purchase the Petitioner's 70% share in the net value of the matrimonial property, calculated as outlined in paragraph 8 above within nine (9) months of the date of this order.

(h) If at the end of this period neither party is able to purchase the other's share in the value of the property, the matrimonial property shall be sold and the net proceeds divided in the shares as outlined above and taking into account the outstanding mortgage as well as outstanding maintenance arrears."

[21] In relation to the two vehicles, the learned trial judge ordered at para [63](i) that each party will retain usage of the vehicles in their possession and that the appellant will pay to the respondent 50% of the purchase price of the vehicle which he had retained, such price to be deducted from his entitlement at paragraph (c).

The Appeal

[22] On 13th June 2018, the appellant filed a notice of appeal with the following seven grounds of appeal:

1. The learned trial judge erred in law and/or misdirected herself on the law in failing to consider that there was no evidence from which an inference could be drawn that the parties intended that the respondent should have a higher than 50% share in the matrimonial home.
2. The learned trial judge erred in law and/or misdirected herself on the law in holding that the contributions made by the respondent towards the mortgage payments, duty-free concessions and household expenses, without more, were sufficient to award the respondent a 70% share in the matrimonial property when there was no evidence to suggest that the parties intended to share the matrimonial property in any other proportion but in equal shares.

3. The learned trial judge erred in law and/or misdirected herself on the law by failing to consider, adequately or at all, the seminal principle of law that in the absence of evidence to the contrary, spouses whose common intention at the time of the acquisition of the [matrimonial property] was to take in equal shares in the [matrimonial property], continue to enjoy equal shares.
4. The learned trial judge erred in law and/or misdirected herself on the law by failing to consider, adequately or at all, that the respondent failed to provide any evidence to show that the intention of the parties was for her to a higher than a 50% share.
5. The learned trial judge erred in law and/or misdirected herself on the law when she made the determination that the higher contribution to the matrimonial expenses was sufficient evidence to justify the respondent having a higher than 50% share in the matrimonial property.
6. The learned trial judge erred in law and/or misdirected herself on the law when she sought to penalise the appellant for not having a regular stable job by reducing his 50% share in the [matrimonial] property.
7. The learned trial judge erred in law and/or misdirected herself on the law by failing to consider that there was no evidence to justify ordering the appellant to pay the respondent 50% of the purchase price of the Vehicle which he had retained.

[23] Based on the grounds of appeal, the issues that arise in this appeal are as follows: (1) whether the learned trial judge erred in law in finding that there was evidence that the parties intended to share the beneficial interest in the matrimonial home otherwise than in equal shares; and (2) whether the learned trial judge was correct in ordering the appellant to pay the respondent 50 per cent of the purchase price of the Vehicle.

The Legal Basis for Property Adjustment in Saint Christopher and Nevis

[24] The notice of application for ancillary relief (pursuant to the **Matrimonial Causes Rules** and common law of trusts) was made by the respondent in the court below pursuant to **Matrimonial Causes Rules**. Section 24 of the **Divorce Act**,[5] provides as follows:

"Savings.

[5] Cap 12:03 of the Revised Laws of Saint Christopher and Nevis.

> 24. (1) Notwithstanding the repeal of the Matrimonial Causes Act, Cap. 50, the Matrimonial Causes Rules (1937 No.1113) shall continue in force with such modifications as are necessary to bring the rules in conformity with the provisions of this Act until new rules are made under section 20 of this Act."

[25] Rule 3(2)(i) of the **Matrimonial Causes Rules** provides that

> "(3) Every application in matrimonial cause for ancillary relief, that is to say, every application for –
> (i) in the settlement, in the case of a decree for divorce or judicial separation by reason of the adultery, desertion or cruelty of the wife, or for restitution of conjugal rights made against the wife, of the property to which she is entitled either in possession or in reversion, or any part thereof, for the benefit of her husband and of the children of the marriage or either or any of them (in these Rules referred to as "settlement of a wife's property");
> shall be by notice in accordance with Form 3 in Appendix II out of the Divorce Registry."

[26] While the notice is made to the court pursuant to the **Matrimonial Causes Rules**, the applicable law is the common law since the **Divorce Act** does not provide a statutory basis on which any claims for property adjustment or settlement can be made. The same point was made by Lanns J (Ag.), at first instance, in Jenifer Jacinth **Carty v Oral Curtis Carty**[6] when she noted that:

> "[51] There is no modern statute in St Kitts and Nevis that is applicable to, or impacts on the issue of division of matrimonial property or alteration or property adjustments. The Matrimonial Causes Act 1948 (Cap 50) which gave the court power in respect of the division of matrimonial assets, has been repealed by the Divorce Act, 2005, No. 32 of 2005. The Divorce Act gives the Court no power in relation to division of matrimonial property, although it saved the Matrimonial Causes Rules, (1937 No. 1113)."

[27] Lanns J (Ag.) then proceeded to apply the common law principles established in **Abbott** to the issue she had to decide.

Competing Interests in Property: Joint Names

[6] SKBHCV2015/0139 (delivered 1st May 2018, unreported).

[28] The United Kingdom Supreme Court in **Jones v Kernott**[7] attempted to clarify the common law relating to the determination of the beneficial interests in a house acquired in joint names by an unmarried couple who intended it to be their family home that was articulated by the House of Lords in **Stack v Dowden**. The leading judgment in **Stack** was given by Baroness Hale who stated that:

> "68 The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual. Nor may disputes be confined to the parties themselves. People with an interest in the deceased's estate may well wish to assert that he had a beneficial tenancy in common. It cannot be the case that all the hundreds of thousands, if not millions, of transfers into joint names using the old forms are vulnerable to challenge in the courts simply because it is likely that the owners contributed unequally to their purchase.
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> 69 In law, "context is everything" and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The

[7] [2011] UKSC 53; [2012] 1 AC 776.

> parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.
>
> 70 This is not, of course, an exhaustive list. There may also be reason to conclude that, whatever the parties' intentions at the outset, these have now changed. An example might be where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is significantly different from what they had then."

[29] In **Kernott**, the leading judgment was the joint judgment of Lady Hale and Lord Walker where they made some observations about **Stack**. First, the conclusions in Lady Hale's judgment in **Stack** were directed to the case of a house transferred into the joint names of a married or unmarried couple, where both are responsible for any mortgage, and where there is no express declaration of their beneficial interests. Lady Hale and Lord Walker continued that, in such cases, there is a presumption that the beneficial interests coincide with the legal estate (at para [10]). Second, the mere fact that the parties had contributed to the acquisition of the home in unequal shares would not normally be sufficient to rebut the presumption of joint tenancy arising from the conveyance (at para [11]). Third, the task of seeking to show that the parties intended their beneficial interests to be different from their legal interests was not to be lightly embarked upon (at para [12]). Fourthly, however, if the task is embarked upon, it is to ascertain the parties' common intentions as to what their shares in the property would be, in the light of their whole course of conduct in relation to it (at para [13]).

[30] Lady Hale and Lord Walker stated that the decision in **Stack** produced a division of the net proceeds of sale of the house in shares roughly corresponding to the parties' financial contributions over the years and that the majority reached that conclusion

by inferring a common intention (at para [30]). Lady Hale and Lord Walker continued that:

> "31 In deference to the comments of Lord Neuberger and Rimer LJ, we accept that the search is primarily to ascertain the parties' actual shared intentions, whether expressed or to be inferred from their conduct. However, there are at least two exceptions. The first, which is not this case, is where the classic resulting trust presumption applies. Indeed, this would be rare in a domestic context, but might perhaps arise where domestic partners were also business partners: see Stack v Dowden, para 32. The second, which for reasons which will appear later is in our view also not this case but will arise much more frequently, is where it is clear that the beneficial interests are to be shared, but it is impossible to divine a common intention as to the proportions in which they are to be shared. In those two situations, the court is driven to impute an intention to the parties which they may never have had."

[31] Lady Hale and Lord Walker explained at para [34] that while the conceptual difference between inferring and imputing is clear, the difference in practice may not be so great. Lady Hale and Lord Walker continued that, in this area, as in many others, the scope for inference is wide. Lady Hale and Lord Walker stated that:

> "36 In the meantime there will continue to be many difficult cases in which the court has to reach a conclusion on sparse and conflicting evidence. It is the court's duty to reach a decision on even the most difficult case. As the deputy judge (Mr Nicholas Strauss QC) said in his admirable judgment [2010] 1 WLR 2401, para 33 (in the context of a discussion of fairness) "that is what courts are for". That was an echo (conscious or unconscious) of what Sir Thomas Bingham MR said, in a different family law context, in In re Z (A Minor) (Identification: Restrictions on Publication) [1997] Fam 1, 33. The trial judge has the onerous task of finding the primary facts and drawing the necessary inferences and conclusions, and appellate courts will be slow to overturn the trial judge's findings."

[32] Lady Hale and Lord Walker concluded that:

> **"Conclusion**
>
> 51 In summary, therefore, the following are the principles applicable in a case such as this, where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests. (1) The starting point is

that equity follows the law and they are joint tenants both in law and in equity. (2) That presumption can 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. (3) Their common intention is to be deduced objectively from their conduct:

> "the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words and 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": Lord Diplock in Gissing v Gissing [1971] AC 886, 906.

Examples of the sort of evidence which might be relevant to drawing such inferences are given in Stack v Dowden [2007] 2 AC 432, para 69. (4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is 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 is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property": Chadwick LJ in Oxley v Hiscock [2005] Fam 211, para 69. In our judgment, "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 may be relevant to ascertaining the parties' actual intentions. (5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).”

[33] The reference to para [69] in **Stack** is a reference to the following:

> "69 In law, "context is everything" and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences

> to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.
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> 70 This is not, of course, an exhaustive list. There may also be reason to conclude that, whatever the parties' intentions at the outset, these have now changed. An example might be where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is significantly different from what they had then."

[34] Lord Collins gave a concurring judgment in which he summarised the reasoning of Baroness Hale and Lord Walker in **Stack** as follows:

> "60 The reasoning of Baroness Hale and Lord Walker of Gestingthorpe, taken together, in Stack v Dowden was as follows. (1) When property is held in joint names, and without any express declaration of trust, the starting point is that the beneficial interest is held equally and there is a heavy burden on the party asserting otherwise: paras 14, 33, 54, 56, 68. (2) That is because it will almost always have been a conscious decision to put the property into joint names, and committing oneself to spend large sums of money on a place to live is not normally done by accident or without giving it thought: para 66. (3) Consequently it is to be expected that joint transferees would have spelled out their beneficial interests when they intended them to be different from their legal interests (para 54) and cases in which the burden will be discharged will be very unusual: para 68. (4) The contrary can be proved by looking at all the relevant circumstances in order to discern the parties' common intention: para 59. (5) There is no presumption that the parties intended that the beneficial interest be shared in proportion to their financial contributions to the acquisition of the property: paras 31, 59-60 (thereby rejecting the approach of the resulting trust analysis as a starting point favoured by Lord Neuberger, dissenting, but not as to the result). (6) 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: para 60. (7) The search was for the result which reflected what the parties must, in the light of their conduct, be taken to have intended, and it did not enable the court to abandon that search in favour of the result which the court itself considered fair: para 61. (8) The matters to be taken into account are discussed in detail at paras 33-34 and 68-70, and it is not necessary to rehearse them here."

[35] Lord Collins offered the following view on the issue of whether the common intention to displace the presumption of equality can be inferred as follows:

> "64 I agree, therefore, that authority justifies the conceptual approach of Lord Walker and Baroness Hale JJSC that, in joint names cases, the common intention to displace the presumption of equality can, in the absence of express agreement, be inferred (rather than imputed: see para 31 of the joint judgment) from their conduct, and where, in such a case, it is not possible to ascertain or infer what share was intended, each will be entitled to a fair share in the light of the whole course of dealing between them in relation to the property.
>
> 65 That said, it is my view that in the present context the difference between inference and imputation will hardly ever matter (as Lord Walker and Baroness Hale JJSC recognise at para 34), and that what is one person's inference will be another person's imputation. …"

[36] Lord Kerr outlined the areas of agreement and disagreement among the members of the court in **Kernott** as follows:

> "68 The following appear to be the areas of agreement. (i) In joint names' cases, the starting point is that equity follows the law. One begins the search for the proper allocation of shares in the property with the presumption that the parties are joint tenants and are thus entitled to equal shares. (ii) That presumption can 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. (iii) The common intention, if it can be inferred, is to be deduced objectively from the parties' conduct. (iv) Where the intention as to the division of the property cannot be inferred, each is entitled to that share which the court considers fair. In considering the question of what is fair the court should have regard to the whole course of dealing between the parties.
>
> 69 The areas of disagreement appear to be these: (a) is there sufficient evidence in the present case from which the parties' intentions can be

inferred? (b) is the difference between inferring and imputing an intention likely to be great as a matter of general practice?"

[37] Lord Kerr explained that there is a role for imputing an intention where no intention exists, or none can be deduced from the evidence as follows:

> "72 It is hardly controversial to suggest that the parties' intention should be given effect to where it can be ascertained and that, although discussions between them will always be the most reliable basis on which to draw an inference as to that intention, these are not the only circumstances in which that exercise will be possible. There is a natural inclination to prefer inferring an intention to imputing one. If the parties' intention can be inferred, the court is not imposing a solution. It is, instead, deciding what the parties must be taken to have intended and where that is possible it is obviously preferable to the court's enforcing a resolution. But the conscientious quest to discover the parties' actual intention should cease when it becomes clear either that this is simply not deducible from the evidence or that no common intention exists. It would be unfortunate if the concept of inferring were to be strained so as to avoid the less immediately attractive option of imputation. In summary, therefore, I believe that the court should anxiously examine the circumstances in order, where possible, to ascertain the parties' intention but it should not be reluctant to recognise, when it is appropriate to do so, that inference of an intention is not possible and that imputation of an intention is the only course to follow.
>
> 73 In this context, it is important to understand what is meant by "imputing an intention". There are reasons to question the appropriateness of the notion of imputation in this area but, if it is correct to use this as a concept, I strongly favour the way in which it was described by Lord Neuberger in Stack v Dowden [2007] 2 AC 432, para 126, where he said that an imputed intention was one which was attributed to the parties, even though no such actual intention could be deduced from their actions and statements, and even though they had no such intention. This exposition draws the necessary strong demarcation line between attributing an intention to the parties and inferring what their intention was in fact.
>
> 74 The reason that I question the aptness of the notion of imputing an intention is that, in the final analysis, the exercise is wholly unrelated to ascertainment of the parties' views. It involves the court deciding what is fair in light of the whole course of dealing with the property. That decision has nothing to do with what the parties intended, or what might be supposed would have been their intention had they addressed that question. In many ways, it would be preferable to have a stark choice between deciding whether it is possible to deduce what their intention was and, where it is not, deciding what is fair, without elliptical references to what their intention

might have—or should have—been. But imputing intention has entered the lexicon of this area of law and it is probably impossible to discard it now.

75 While the dichotomy between inferring and imputing an intention remains, however, it seems to me that it is necessary that there be a well marked dividing line between the two. As soon as it is clear that inferring an intention is not possible, the focus of the court's attention should be squarely on what is fair and, as I have said, that is an obviously different examination than is involved in deciding what the parties actually intended."

[38] Lord Wilson explains his disagreement with aspects of the reasoning of Baroness Hale in **Stack** as follows:

"85 In para 61 of her ground-breaking speech in Stack v Dowden Lady Hale quoted, with emphasis, the words of Chadwick LJ in para 69 of Oxley v Hiscock, which I have quoted in para 83 above. Then she quoted a passage from a Discussion Paper published by the Law Commission in July 2002 and entitled Sharing Homes about the proper approach to identifying the proportions which "were intended". Finally she added four sentences to each of which, in quoting them as follows, I take the liberty of attributing a number:

> "[1] That may be the preferable way of expressing what is essentially the same thought, for two reasons. [2] First, it emphasises that the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. [3] Second, therefore, it does not enable the court to abandon that search in favour of the result which the court itself considers fair. [4] For the court to impose its own view of what is fair upon the situation in which the parties find themselves would be to return to the days before Pettitt v Pettitt [1970] AC 777 without even the fig leaf of section 17 of the [Married Women's Property Act 1882]."

86 I leave on one side Lady Hale's first sentence although, whereas Chadwick LJ was identifying the criterion for imputing the common intention, the context of the passage in the Discussion Paper suggests that the Law Commission was postulating a criterion for inferring it. On any view Lady Hale's second sentence is helpful; and, by her reference to what the parties must, in the light of their conduct, be taken to have intended (as opposed to what they did intend), Lady Hale made clear that, by then, she was addressing the power to resort to imputation. Lady Hale's fourth sentence has been neatly explained—by Mr Nicholas Strauss QC, deputy judge of the Chancery Division, who determined the first appeal in these proceedings, at para 30—as being that, in the event that the evidence were to suggest that, whether by expression or by inference, the parties intended that the beneficial interests in the home should be held in certain

> proportions, equity would not "impose" different proportions upon them; and, at para 46 above, Lord Walker and Baroness Hale JJSC endorse Mr Strauss QC's explanation.
> [2012] 1 AC 776 at 803
>
> 87 The problem has lain in Lady Hale's third sentence. Where equity is driven to impute the common intention, how can it do so other than by search for the result which the court itself considers fair? The sentence was not obiter dictum so rightly, under our system, judges below the level of this court have been unable to ignore it. Even in these proceedings judges in the courts below have wrestled with it. Mr Strauss QC observed, at para 31, that it was difficult to see how—at that final stage of the inquiry—the process could work without the court's supply of what it considered to be fair. In his judgment on the second appeal Rimer LJ went so far as to suggest, at para 77, that Lady Hale's third sentence must have meant that, contrary to appearances, she had not intended to recognise a power to impute a common intention at all.
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> 88 I respectfully disagree with Lady Hale's third sentence.
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> 89 Lord Walker and Baroness Hale JJSC observe, at para 34 above, that in practice the difference between inferring and imputing a common intention to the parties may not be great. I consider that, as a generalisation, their observation goes too far—at least if the court is to take (as in my view it should) an ordinarily rigorous approach to the task of inference. Indeed in the present case they conclude, at paras 48 and 49, that, in relation to Chadwick LJ's second question the proper inference from the evidence, which, if he did not draw, the trial judge should have drawn, was that the parties came to intend that the proportions of the beneficial interests in the home should be held on a basis which in effect equates to 90% to Ms Jones and to 10% to Mr Kernott (being the proportions in favour of which the judge ruled). As it happens, reflective perhaps of the more rigorous approach to the task of inference which I prefer, I regard it, as did Mr Strauss QC in his judgment [2010] 1 WLR 2401, paras 48, 49, as more realistic, in the light of the evidence before the judge, to conclude that inference is impossible but to proceed to impute to the parties the intention that it should be held on a basis which equates to those proportions. At all events I readily concur in the result which Lord Walker and Baroness Hale JJSC propose."

[39] What then, is the current state of the law concerning the case of a house transferred into the joint names of a married or unmarried couple, where both are responsible for any mortgage, and where there is no express declaration of their beneficial interests? It is as follows. First, the starting point is that equity follows the law, and they are joint tenants both in law and in equity. Second, that presumption can 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. Third, their common intention is to be deduced objectively from their conduct. Fourth, in cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is 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, each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property.

[40] The appellant cites the decision of the Court of Appeal of England and Wales in **Fowler v Barron**[8] where the Court of Appeal had to consider a case where a man and a woman had lived together for about 17 years and had bought property together and it was registered in both their names. The Court explained that in the absence of any express declaration of trust, he had to concentrate on how the purchase money was actually provided. The judge continued that where it is provided by the two parties in unequal amounts, the principles governing the creation or operation of resulting implied and constructive trusts apply, and each legal owner should be beneficially entitled as between themselves in the proportions in which they provided the purchase money. He concluded that in such cases the presumption of a resulting trust therefore should apply, and that the property must be taken necessarily to be held in shares proportionate to the respective contributions to the purchase price.

[41] On appeal, the Court of Appeal explained at para [24] that the judge did not have the benefit of the decision of the House of Lords in **Stack**. It continued that following **Stack** the legal technique that the court will use to ascertain whether both joint owners who had been cohabitees had a beneficial interest is that of the common intention constructive test, rather than that of resulting trust. In respect of the first issue that arose in the appeal, namely, whether the judge fell into error in seeking to determine the parties' intentions with respect to the shares in which they owned in

[8] [2008] EWCA Civ 377.

the property by concentrating on the parties' financial contributions, the Court of appeal answered in the affirmative. The Court of Appeal explained at para [30] that, in **Stack**, the House of Lords held that, in the absence of an express agreement, 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. The Court of Appeal held that the judge concentrated on the parties' financial contributions and in so doing he erred in principle.

[42] In answering the second question of whether the respondent, Mr. Barron, had discharged the onus on him of showing that it was not the parties' shared intention that the appellant, Miss Fowler, should have a one half-share in the property, the Court of Appeal answered it in the negative. The Court of Appeal explained at para [32] that for the purpose of determining the parties' shared intentions about the beneficial ownership of the property, the court must consider the whole of the parties' relationship so far it illumines their shared intentions about the ownership of the property and the court must draw any appropriate inferences. The Court of Appeal noted that:

> "[33] The starting point is of course that the transfer of the property was into the joint names of Mr Barron and Miss Fowler. Whatever Mr Barron's motive was for doing this, it was a deliberate choice. As a matter of law, a presumption of joint beneficial ownership arose from the fact that they were joint legal owners: see Stack at para [58] per Baroness Hale of Richmond. It was open to Mr Barron to rebut this presumption. There was no direct evidence of the parties' intentions, and accordingly the only evidence was circumstantial.
>
> [34] At this point it may be appropriate to make some observations about the effect of the presumption. It provides a default rule that, unless and until the contrary is proved, joint tenants in this context are treated as joint legal and beneficial owners. If the contrary were not proved, the mere fact that the property was transferred into their joint names would be enough to give both parties an equal beneficial share.
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> [35] In determining whether the presumption is rebutted, the court must in particular consider whether the facts as found are inconsistent with the inference of a common intention to share the property in equal shares to an extent sufficient to discharge the civil standard of proof on the person

seeking to displace the presumption arising from a transfer into joint names."

[43] The Court of Appeal stated at para [36] that emphasis is on the parties' shared intentions and at para [38] that Baroness Hale in **Stack** at para [68] had warned about the potential unreliability of evidence given about beneficial interests after the event. The respondent in oral submissions made at the hearing of the appeal sought to distinguish **Fowler** based on the existence in that case of mutual wills. However, as the Court of Appeal made clear at para [42], was that the existence of the mutual wills indicated that each party intended the other to have an interest in the property. The existence of the mutual wills was not decisive for the determination in **Fowler** that the parties did not have the common intention to depart from the presumption of equal beneficial ownership.

Analysis and Conclusions

[44] The appellant seeks to challenge primary findings of fact by the learned trial judge. In this regard, this Court in **Augustin Stephen v Sabrina Butcher**[9] stated that:

> [6] … This Court has repeated on many occasions that it will not easily interfere with a judge's evaluation of the evidence or a judge's findings of fact and inferences of fact made by a judge especially when they depend to a significant extent upon the judge's assessment of witnesses he or she has seen and heard give evidence. The Privy Council in Beacon Insurance Company Limited v Maharaj Bookstore Limited stated that occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence (at para [12]). The Privy Council in Beacon expressly approved (at para [13]), the following passage of the decision of the United Kingdom Supreme Court in Re B (a child) (care order: proportionality: criterion for review) where it was stated that:
>
> > "52 There is no question of this court interfering with, or indeed being asked to interfere with, the findings of primary fact made by the judge. Bearing in mind that it is a second appeal tribunal, the Supreme Court is virtually never even asked to reconsider findings of primary fact made by the trial judge. The Court of Appeal, as a first appeal tribunal, will only rarely even contemplate reversing a trial judge's findings of primary fact.

[9] SLUHCMAP2022/0007 (delivered 9th December 2024, unreported).

> 53 As Baroness Hale JSC and Lord Kerr of Tonaghmore JSC explain in paras 200 and 108 respectively, this is traditionally and rightly explained by reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals on fact can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first).
>
> 54 The second and third steps involved in the threshold issue can be combined into the single question of whether the primary facts found and assessments made by the judge were capable of justifying the conclusion he reached that the threshold contained in section 31(2) was satisfied."

[7] In the same way, this Court should be slow to reverse a trial judge in their evaluation of primary facts. Lord Hoffman in Biogen Inc v Medeva plc, stated at p. 45 as follows:

> "The question of whether an invention was obvious had been called "a kind of jury question" (see Jenkins LJ in Allmanna Svenska Elektriska A/B v The Burntisland Shipbuilding Co Ltd (1952) 69 RPC 63, 70) and should be treated with appropriate respect by an appellate court. It is true that in Benmax v Austin Motor Co Ltd [1955] AC 370((1955) 72 RPC 39, 42) this House decided that, while the judge's findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, were virtually unassailable, an appellate court would be more ready to differ from the judge's evaluation of those facts by reference to some legal standard such as negligence or obviousness. In drawing this distinction, however, Viscount Simonds went on to observe, at page 374, that it was "subject only to the weight which should, as a matter of course, be given to the opinion of the learned judge". The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded

> by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, la verite est dans une nuance), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation. It would in my view be wrong to treat Benmax as authorising or requiring an appellate court to undertake a de novo evaluation of the facts in all cases in which no question of the credibility of witnesses is involved. Where the application of a legal standard such as negligence or obviousness involves no question of principle but is simply a matter of degree, an appellate court should be very cautious in differing from the judge's evaluation."

[45] As mentioned above from the judgment of Lady Hale and Lord Walker in **Kernott**, the starting point is that equity follows the law, and they are joint tenants both in law and in equity. This means that the appellant and the respondent are joint tenants both in law and equity. The learned trial judge averted to this at para [3] of her written judgment where she referred to that general principle emerging from the decision of the House of Lords in **Stack**. In respect of this, the learned trial judge approached the issue correctly with the appropriate starting point.

[46] The next consideration is whether the presumption was displaced. It will be remembered that in **Kernott**, Lady Hale and Lord Walker stated that the presumption can 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. The learned trial judge refers to this implicitly when at para [46] she stated that: (1) it is not for the appellant to prove that he is entitled to 50% equitable interest in the matrimonial property; and (2) it is the respondent who asserts that she should have more than 50% and all the authorities are clear that the onus on her to prove why she should be so entitled. The learned trial judge examined the evidence of the appellant at paras [20] to [35] and that of the respondent from paras [11] to [19]. The learned trial judge concluded that there is no evidence of express or inferred intention however imperfectly remembered or however imprecise their terms may have been. This conclusion was reached after the learned trial judge examined the evidence of their common intention which was deduced objectively from the conduct of the appellant and the respondent.

[47] In my view, this is a finding of fact by the learned trial judge that there was no evidence that the appellant and the respondent had a different common intention when they acquired the matrimonial home or that they later formed a different common intention that their respective shares (of 50%) would change. The appellant has not shown that those two conclusions on the primary facts reached by the learned trial judge was such that: (1) there was no evidence to support, (2) was based on a misunderstanding of the evidence, or (3) no reasonable judge could have reached, that an appellate tribunal will interfere with it. Having made those findings, the learned trial judge did not have to further consider the fourth consideration for it would not have arisen on the facts found by her on the evidence in the court below. Only where it is clear that either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is 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, will the Court consider what fair share each party is entitled to having regard to the whole course of dealing between them in relation to the property.

[48] At the hearing of the appeal, the Court questioned counsel for the respondent on the issue of whether there was any documentary evidence that the parties held the property as joint tenants. Counsel for the respondent replied that there was none, but that this was not in dispute between the parties. I therefore proceed on the basis that the appellant and the respondent held the Property as joint tenants. On the evidence and findings of the learned trial judge, there was no evidence that the appellant and the respondent did not intend a joint tenancy at the outset. Similarly, there was no evidence before the learned trial judge that the appellant and the respondent had changed their original intention to share the beneficial interest equally. After observing that there was no evidence of express or inferred intention, the learned trial judge explained at para [46] that:

> "[46] … In the absence of same the parties' whole course of conduct in relation to the matrimonial property including their financial contributions

> and or/other contributions and how the property was financed or purchased both initially and subsequently lean to a conclusion that the significantly greater financial contribution made by the Petitioner should be reflected in according the respective beneficial interest of the parties in the matrimonial property."

[49] Having found that there was no evidence of express or inferred intention, it meant that the presumption that equity follows the law, and that the appellant and the respondent are joint tenants both in law and in equity, was not displaced. This is based on a finding of primary fact found by the learned trial judge. As was stated in para [12] of **Kernott**, and quoted above, the mere fact that the parties had contributed to the acquisition of the home in unequal shares would not normally be sufficient to rebut the presumption of joint tenancy arising from the conveyance. Only if the presumption was displaced would it be necessary for the learned trial judge to consider further what share the appellant and the respondent are entitled to, based on what the court considers fair having regard to the whole course of dealing between them in relation to the property.

[50] The submissions of the parties focused exclusively on the financial contributions, no doubt because it was the focus on the decision of the learned trial judge. The appellant submits that had the learned trial judge focused on the evidence of the appellant, she would have held otherwise. The appellant submits that financial contributions are but one aspect of the conduct of the parties that must be examined to determine whether their shared common intention had changed. The respondent submits that there was ample evidence before the learned trial judge which supported the respondent's position that the parties held the equitable interest separate from the legal title. The respondent then cites from the financial contributions of the respondent and that of the appellant, concluding that it was unconscionable for the appellant to complain that there was no evidence from which an inference could have been drawn that the parties intended for the respondent to have a higher than 50% share in the Property.

[51] The learned trial judge nonetheless proceeded to examine primarily the financial contributions of the parties in relation to the Property and how the Property was financed or purchased both initially and subsequently to conclude that "the significantly greater financial contribution made by the Petitioner should be reflected in according the respective beneficial interest of the parties in the matrimonial property". This analysis is reminiscent of the resulting trust analysis that was rejected by the UKSC in **Kernott** at para [25] as follows: in the case of the purchase of a house or flat in joint names for joint occupation by a married or unmarried couple, where both are responsible for any mortgage, there is no presumption of a resulting trust arising from their having contributed to the deposit (or indeed the rest of the purchase) in unequal shares. It is true that the learned trial judge did not use the term resulting trust but her focus exclusively on the financial or other contributions to the Property leads to the conclusion that the learned trial judge erred in so concluding.

[52] Both parties signed the mortgage that was in both of their names. It was not disputed that the respondent had a higher earning power than the appellant. The evidence before the learned trial judge was that the respondent contributed financially more to the cost of acquiring and constructing the matrimonial home and the respondent paid more in mortgage payments than the appellant. The decision in **Stack** makes clear that the court must have regard to all the circumstances which may shed any light on the shared intentions of the appellant and the respondent concerning ownership of the Property. The critical factor is not only the parties' financial contributions. In my view, the learned trial judge did not have regard to all the circumstances which would throw light on their shared intentions of the parties. She focused exclusively on their financial contributions to the cost of acquiring the Property. In other words, the focus should not have been on the fact that the parties made unequal contributions to the cost of acquiring the Property but the inferences that the learned trial judge should have drawn concerning their shared intentions to be derived from an overall evaluation of the evidence.

[53] Based on the evidence before the learned trial judge, in my view, the respondent had not successfully rebutted the presumption of equal beneficial interests it is doubtful that that presumption can be successfully rebutted. The learned trial judge made no finding that the appellant and the respondent's shared intention was that they should share the beneficial interest in the Property in proportion to the amount of their financial contributions to the cost of the Property. That was the only basis on which the presumption of equal beneficial interests in the Property could have been rebutted. The rebuttal having failed means that the starting point of equal beneficial interest remained, and the appellant and the respondent shared the Property equally in law and in equity. The jurisdiction of the court to interfere is based on the parties' common intention, expressed or inferred. The learned trial judge by focusing only on financial matters took a rather narrow approach which led her into error.

[54] At the hearing of the appeal, counsel for the respondents drew the Court's attention to a letter written by the respondent to the appellant on 6th March 2012 and copied to the respective ministers of religion of the parties. In **Marr v Collie**,[10] it was submitted to the Privy Council that the Court of Appeal of the Bahamas also relied and placed considerable weight upon an inadmissible email, which the claimant had no opportunity to challenge, explain or comment upon during the trial or the appeal. The Privy Council explained that:

> "27 Central to the plaintiff's appeal against the decision of the Court of Appeal was the claim that court, in order to found its critical determination that it had been the intention of the parties that they should hold the investment properties in equal beneficial shares, had focused on an item of evidence which had not featured in the trial before Isaacs J. This was the e-mail that had been sent by the plaintiff to Ms Gardiner. This had not been put to the plaintiff during his testimony. It was not mentioned in the hearing before the Court of Appeal, it was claimed. Moreover, the e-mail was, the plaintiff contended, inadmissible. It was not listed in the agreed bundles and the position of the Bahamian courts was to treat contents of documents which had not been agreed as inadmissible unless introduced in evidence: Colco Electric Co v Gold Circle Co [2003] BHS J No 53 (BSC). The e-mail had been included in the defendant's bundle of documents but it was not in the agreed bundle and had not been tendered in evidence. No oral

[10] [2018] AC 631.

testimony had been given as to its contents and the plaintiff never had the opportunity to say anything about its import."

[55] The Privy Council explained that:

> "59 The Court of Appeal's finding that there was sufficient evidence to permit a conclusion that it was the common intention of the parties that the beneficial interest should be shared is likewise unsustainable. In the first place, it failed to address a number of factual findings made by Isaacs J, albeit that those were made against the background of his view that the resulting trust solution should be applied. In particular, the judge found that the plaintiff's evidence was more credible than that of the defendant. It is to be presumed that this included his assessment of the evidence of the plaintiff that he did not intend to confer an equal beneficial interest in the investment properties on the defendant and that the decision to have the properties conveyed into joint names was on the basis that the latter would make an equal contribution to their development. Quite apart from this, the Court of Appeal's decision rested crucially on its consideration of the effect of the e-mail of 10 March 2005. The plaintiff and his counsel were never given the opportunity to comment on this, much less to make submissions on the significance, if any, which should be placed on it."

[56] The Privy Council agreed that the claimant in that case was not given an opportunity to comment on the evidence and to make submissions on it. This was unlike the case here in this appeal. During the hearing of the appeal, counsel for the respondent referred to this letter to suggest that from almost the beginning of the mortgage, the parties had an arrangement from the beginning for the appellant to pay 50% of the mortgage and for him to contribute 50% of the household expenses. It was submitted that the appellant had reneged from that agreement between the parties and that there were several court orders with respect to the appellant reneging from his responsibilities, for example, the payment of the $9,000.00 electricity bill. The appellant submitted that, on the contrary, the letter showed that the appellant was not in a position, even at that early time, to contribute equally but that each party would carry their own responsibilities. In my view, the letter confirms that the common intention of the parties was to share equally in the financial responsibilities. The fact that the appellant struggled to do so given the accepted financial disparity between the parties does not undermine that common intention or show that it had changed subsequently.

[57] In respect of the order of the learned trial judge that the appellant will pay to the respondent 50% of the purchase price of the vehicle which he had retained, the appellant submitted at the hearing of the appeal that the cost of the Vehicle would have been subsumed under the mortgage when it was obtained. The appellant submitted that issue is similar to one concerning furniture that was considered in **Abbott**. The Privy Council in **Abbott** had the following to say about the approach of the trial judge:

> "[25] Mitchell J also decided that the furniture bought for the matrimonial home was owned in equal shares. The wife had not had the benefit of it since she left. Hence he ordered that she be given credit for half its value when the house was sold in accordance with his order. The Court of Appeal set aside his order for sale, ordering instead that the husband pay the wife the sum of EC $65,192 to represent her beneficial interest in the home. It must therefore have concluded that she had no interest in the furniture or that such interest as she had was worthless.
>
> [26] Mitchell J's reasoning was that the furniture was bought out of the joint bank account for the benefit of the family as a whole, although the husband had contributed almost all the money to that account. But the husband appears to have accepted that the furniture belonged to them both. Furniture in the matrimonial home is very different from shares, which can readily be transferred into joint names. There is no simple means of delivering domestic furniture from one occupant to another. Buying it out of a joint account and causing it to be delivered to the family home for their joint use and benefit is the most that can usually be expected.
>
> [27] However, the judge proceeded to order an adjustment based upon the wife's estimate of the costs of purchase in 1991. This is unrealistic. It is not suggested that any items of the furniture were valuable antiques or art work which might be expected to increase rather than decrease in value. Twelve years later much of it will have been of little value. Some had been disposed of and the wife had declined to take any of it with her. The wife is entitled to something to compensate her for what she has lost, but in the absence of better evidence it should not be more than 20 per cent of the costs of acquisition."

[58] The Privy Council at para [28] ordered that the house be sold and the proceeds divided equally, subject to an adjustment in favour of the wife for 20 per cent of the costs of acquiring the furniture. In reply to the question from the Court as to whether

she intends to concede the issue concerning the Vehicle, counsel for the respondent, while not conceding, stated that based on the way the issue was addressed by the learned judge she could see where the argument could be made by the appellant that sufficient attention was not made on that point and she was in the hands of the court on that point. Given the number of years involved on the facts in this appeal, it would not be appropriate to apply to solution adopted by the Privy Council in **Abbott**.

[59] In the court below, the learned trial judge provided no reasoning to explain her conclusion and order concerning the Vehicle. In my view, that order of the learned trial judge cannot be sustained. The evidence in the court below was that the loan for the Vehicle was consolidated and subsumed into the mortgage of the Property. No doubt the Vehicle would have depreciated from the time of its purchase. The respondent is entitled to be compensated for what she has lost; I would order that the Vehicle be valued and sold, and the proceeds be divided equally between the parties unless either party wishes to pay the other party the amount of their share of the proceeds of the Vehicle.

[60] **Postscript**

It may be that the time has come for the National Assembly of Saint Christopher and Nevis to amend the **Divorce Act** explicitly to provide for the respective interests of spouses or former spouses in the matrimonial home.

Disposition

[61] Based on the foregoing, I would allow the appeal against the decision of the learned trial judge and, for the avoidance of doubt, make the following orders:

(1) The order of the learned trial judge that: (1) the respondent is entitled to a 70% share in the Property; and (2) the appellant is entitled to a 30% share in the Property found at para [63], subparagraphs (c)-(h) are set aside.

(2) The appellant and the respondent are each entitled to a 50% share in the Property.

(3) The Property shall be valued by a reputable and independent valuator to be agreed upon by the parties within one month of the date of this order.

(4) The amount of the maintenance arrears as at the date of this order are to be deducted from the amount of the appellant's equity in the value of the Property.

(5) The respondent shall be at liberty to purchase the appellant's 50% share in the net value of the Property, taking into account the amount of the outstanding mortgage and maintenance arrears within three (3) months of the date of this order. The appellant shall be permitted to remain in the Property until receipt of the value of his 50% share in the net value of the Property.

(6) If the respondent is unable to purchase the appellant's share of the Property within the time stipulated as above, the appellant shall be at liberty to purchase the respondent's 50% share in the net value of the Property, calculated as outlined in paragraph (3) above within nine (9) months of the date of this order.

(7) If at the end of this period neither party is able to purchase the other's share in the value of the Property, the Property shall be sold and the net proceeds divided in the shares as outlined above and taking into account the outstanding mortgage as well as outstanding maintenance arrears.

(8) The order of the learned trial judge that the appellant pay the respondent 50% of the purchase price of the Vehicle is set aside.

(9) The Vehicle shall be valued by a reputable and independent valuator to be agreed upon by the parties within one month of the date of this order.

(10) The Vehicle shall be sold, and the net proceeds be divided equally between the parties unless either party wishes to pay the other party their share of the proceeds of the sale of the Vehicle.

(11) The appellant shall have his costs in the appeal to be paid by the respondent to be assessed if not agreed within 21 days of today's date.

[62] I am grateful for the assistance provided by learned counsel for the parties.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar