



**IN THE SUPREME COURT OF  
THE TURKS AND CAICOS ISLANDS**

**ACTION NO. CL 44/2010**

**BETWEEN**

**MARJORIE GERTRUDE GRANT**

**PLAINTIFF**

**AND**

**WILLIAM GARVEY GRANT**

**DEFENDANT**

**CORAM: AGYEMANG CJ**

**MR. COURTENAY BARNETT FOR THE PLAINTIFF  
DR. FINBAR A.A. GRANT FOR THE DEFENDANT**

**HEARD ON 26, 27, 29 OCTOBER 2020  
DELIVERED ON 11 JANUARY 2021**



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## JUDGMENT

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1. The plaintiff, divorced from the defendant some five years before the commencement of this suit, claims by this suit, *inter alia*, a declaration that the Defendant holds the title in Lot 10307/17 Grand Turk, on trust for the Plaintiff relative to the payments made, based upon representations made to the Plaintiff by the Defendant, and that the title is held to such value as this court may determine; a declaration as to other interests acquired by the Plaintiff; such other declarations and/or reliefs as shall protect the acquired equities in all the circumstances, and damages for fraud and/or deceit and/or misrepresentation.

2. The matters that have given rise to the present suit are sufficiently simple:

The parties were married from 1979 until 2005 when a decree nisi, granted by the court to dissolve their union in 2002, was made absolute. From 1984, they lived in a house that was considered their matrimonial home, until 1993 when the defendant left the matrimonial home in Grand Turk for Providenciales where he eventually obtained employment and settled. The parties appeared to have kept somewhat amicable relations although living on separate islands for some time. In 2002, however, the parties having lived on separate islands since 1993 and the defendant evincing no intention to return to the matrimonial home, save for making intermittent visits, the plaintiff filed for divorce.

3. In the proceedings that resulted in the divorce, the court did not go into the matter of the interest held by the parties in property occupied by the plaintiff, described as: Lot 10307/17, situate and lying at Grand Turk, on which stand two properties at this time. The plaintiff claimed an interest therein, which allegation was denied by the defendant.

4. The court however, in a post judgment ruling, recognised the defendant as owner of the said property, and declined to put him out of it although he was advised to exercise restraint in respect of any visit to the property.

5. The present proceedings have been brought to determine the property rights of the parties in relation to the two houses on Lot 10307/17, Grand Turk.

## Plaintiff's Case

6. It is the case of the plaintiff whose suit claims that the defendant holds the property upon a constructive or resulting trust for her, that she was the victim of the plaintiff's calculated misrepresentations to benefit from financial contributions made by her while failing to honour his expressed intention to place the plaintiff's name on title 10307/17/1 in Grand Turk.
7. The plaintiff alleged that relying on representations made by the defendant to her about joint ownership, she had made personal contribution to the purchase of the freehold, and the construction of the properties thereon. She alleged her substantial contribution to include being co-signatory to the loan by which the freehold title to the land was acquired, the assignment of her salary as security for the mortgage loan, and the use of personal monies and physical energies for the maintenance of the properties on the land from 1994 to the present time.
8. In her pleading, the plaintiff alleged that the defendant, with full knowledge of her contribution over the years, had by means of fraud, deceit and/or misrepresentation, failed and willfully contrived to exclude the Plaintiff's name from title to Lot 10307/17. This he achieved by making representations to her which had caused her to "part with significant sums of her money over long years, based on the assumption that her name would have been placed on the title to Lot 10307/17". This belief, she had allegedly held until the time of the divorce.
9. The plaintiff pleaded particulars of the expenditure she made in alleged reliance, on the alleged 'express representations', as: her participation in bank loans in Grand Turk, the "pooling her life's earnings" to make payments made for the acquisition of 10307/17; the maintenance of the houses at 10307/17 over decades; monies advanced to the defendant which were used for a motor vehicle purchase in Providenciales, and post-hurricane Ike repairs to the houses at 10307/17.
10. In the evidence led in support to substantiate the said matters alleged in pleading, the plaintiff alleged that her contributions started when in 1977, during a period of courtship with the defendant, she helped the defendant to pay arrears of rent on the land which was at that time, leased by the defendant from the Government at a monthly rent of USD\$220. She recounted further, that at the time of her marriage, the entire tract of land on which stand two

properties at this time, was vacant land, held by the plaintiff under a lease. It was her evidence that the construction of the houses were done during the marriage after the parties secured a loan in Grand Turk from Barclays Bank in 1981 to first put up the smaller house, and then the bigger house which became their matrimonial home.

11. It is the plaintiff's case, that while the title to the land on which the properties stand is held by the defendant, she is in fact a beneficial owner, along with the defendant. As aforesaid, she anchors her case on two legs: first, that the defendant allegedly led her to believe that she was to be joint owner of the properties, which representation she relied on to her detriment. This detriment, she described as: contributions she made to the acquisition of the freehold and the building of the properties. The second leg, is that she has in fact made substantial contribution to the maintenance of the property, such as should count towards the acquisition of an interest in the property.

12. Providing details regarding her alleged contribution, the plaintiff avers that she assigned her salary as security for a loan in 1984, which was intended to help them complete both houses on the land. She recounts, that from 1993 when the defendant left the matrimonial home (for such extended time that it was held to amount to his desertion of the marriage), until the present time, she has lived in the house, taken care of it throughout the period, paid what was owing on the mortgage in 1994 until 2002, paid insurance on it for a time, and repaired damage that was occasioned to it during two hurricanes: in 2008 (Hurricane Ike) and 2017 (Hurricane Irma).

### **Defendant's Case:**

13. The defendant denies the claims of the plaintiff. It is the case of the defendant, that the land described as: 10307/17 on which two houses stand was acquired solely by him, when his application to lease the land, resulted in the grant of the land on a lease to own basis in 1977, and later, in 1985, when he acquired the freehold title to the land.

14. The defendant avers, that the lease he acquired in 1977, was through his sole efforts from 1973, and that when he decided to put up buildings on the land, he first put up the big house (former matrimonial home) up to belt course, and then he (to secure his building materials which were at risk from thieves), started to put up the smaller house (the rental property).

15. It is the defendant's evidence that in 1978 he secured a loan from Barclays Bank to complete the smaller (rental) property. At this time, he alleges that both houses had been built to belt course. In 1979, he married the plaintiff. He averred that upon completing the smaller house which he gave out for rent, he continued to live with his cousins; Mr. and Mrs. Godet, and that he moved out to live with the plaintiff's mother when he got married to the plaintiff in 1979, and she would not live at the Godet's with him. The couple later went to live with the plaintiff's sister until 1984 when they moved into their matrimonial home: the bigger house on Lot 10307/17. It was the defendant's evidence that in 1984 at the time the couple occupied the matrimonial home, the house only had a temporary flat roof. In due course, a permanent roof was provided with money the defendant inherited from his father's estate. In time, he added through his own energies, a porch and a utility room.
16. The defendant denied ever making any representation to the plaintiff, that the properties would be owned by them jointly, nor did he take any money from her for any part of the construction. He was emphatic in his denial that there had been any contribution from the plaintiff towards the acquisition of the properties.
17. In response to the plaintiff's claim to an interest by reason of her involvement in the securing of a mortgage loan in 1981 and then in 1985, the defendant recounted that he did not enter into any loan transaction in 1981, much less, with the involvement of the plaintiff. He recounted that in 1985, however, through negotiations with his friend, a bank Manager, he secured a loan for the purchase of a motor vehicle - an amount of US\$22,000 to which the plaintiff was a co-signatory. He alleged that the plaintiff was made to co-sign the loan as a formal requirement as he was a married man. It was also as a formality, that she was made to assign her salary.
18. Although the defendant was emphatic that the purpose of the loan was to purchase a car for his use, and not to construct houses on Lot 10307/17 (as the two houses thereat were allegedly already completed), he admitted that part of the loan money was used to acquire the freehold title to the land.
19. Regarding the assignment of the plaintiff's salary, the defendant insisted that the plaintiff's salary, was never, in spite of the assignment, accessed for the repayment of the loan. This was because from 1985 until April 1994, repayments of the loan were made from his Scotia Bank Account, a sole, not

joint account, into which rental monies from the smaller house were placed to repay the loan. He averred that it was not until April 1994: nine years after the loan transaction was entered into (at a time he had left for Providenciales to seek for work), that the plaintiff made a first payment from monies she had collected as rent from the rental property. The said payment by the plaintiff was made from her savings account into which she had diverted the rental income which was to be paid into the defendant's account for the loan's repayment.

20. The defendant insisted that from these diverted funds, the plaintiff paid the balance of the loan account which was outstanding which sum was inclusive of loans in the total sum of US\$15,000 allegedly contracted to sort out the medical issues of the plaintiff and her mother.

21. Regarding the contribution of the plaintiff to the maintenance of the houses especially after two hurricanes, the defendant asserted that the plaintiff had found herself in a bind only because she had cancelled the insurance on the houses (he had previously insured them with Lloyds of London), and neglected to insure the houses.

22. The defendant maintained that for the payment of insurance on the properties, as for other maintenance costs, the plaintiff had the rental money to undertake them, and did in fact use them as she had no money of her own to speak of. The defendant denied that the plaintiff had used any inheritance money or any money from her earnings towards the acquisition or the maintenance of the properties. He also averred that the plaintiff who always allegedly kept her money to herself and used her retirement funds for a car and motor cycle, relied on the rental income to undertake repairs to the houses, and the performance other routine maintenance, and kept the rest for herself. Regarding the repairs allegedly made by the plaintiff after Hurricane Ike, the defendant denied that the plaintiff had made any serious expenditure, as she alleged; he pointed to a contemporaneous entry made by the plaintiff when she attempted secure European Union funding after a hurricane: that damage to the house was minor. He also, relying on a contrary report by an expert, refuted the plaintiff's assertion that there was a necessity to build a sea defence wall which required her to expend monies to secure the property.

23. It is the case of the defendant that the plaintiff who has lived in the former matrimonial house rent-free since their divorce in 2005, and has collected

rents from the rental property to maintain the matrimonial house, has on more than one occasion sought to use legal process to deprive him of his property, alleging a spurious interest in the properties. The defendant avers that to curtail these proceedings, he had made overtures to the plaintiff in an attempt at an amicable settlement, either to give her a lump sum payment, or to give her the rental property. All these, the plaintiff had allegedly rebuffed as she intended to claim the entire property as hers.

24. Central to the defendant's case in response to the plaintiff's allegation of contribution through property maintenance, is his assertion that through the years, the rental property has yielded more than enough income for the maintenance of the two properties on the land. He in fact complains that through the years, that plaintiff has kept for herself, what was left of the rental income after the necessary disbursements for maintenance, depriving him of the benefit from "*[his] primary investment which was and still is an inequitable position to [himself]*".

25. The defendant further insists, that the plaintiff has since 1999 been unemployed, and has for 21 years and 8 months, benefitted from rent-free accommodation in the former matrimonial home, and furthermore, has received rental income, that far outweighs any contribution she may have made, a matter denied by the defendant.

### **Issues**

26. At the close of pleadings, the following matters stood out as issues for determination:

1. Whether or not the plaintiff had expressly fraudulently misrepresented to the plaintiff that the matrimonial home would be jointly owned by them;
2. Whether or not the plaintiff had relied on the alleged representation and had made significant contribution to the acquisition and maintenance of the properties;
3. If the plaintiff acquired an interest whether by promise, misrepresentation or contribution, in what portion would such interest be.
4. Whether or not the plaintiff is entitled to her claims.

### **FRAUDULENT MISREPRESENTATION AND DECEIT**

27. The plaintiff's case was grounded on an alleged reliance on alleged fraudulent misrepresentation and/or deceit of the plaintiff, made with intent to get the

plaintiff to make a substantial contribution both in cash and in kind, to the acquisition and maintenance of the properties on Lot 10303/17. The contribution was alleged to be in cash and in kind, the latter, being the energies she expended in maintaining the properties from 1994, through the couple's divorce, to the present time.

### **Financial Contribution.**

28. In pleading the plaintiff alleged that: "the defendant induced the Plaintiff to hand over her salary, a portion of her inheritance, and was further induced to be guarantor based on representations made that she was a party to the purchase of title 10307/17". Additionally, that she had "pooled her life's earnings" and used them, together with about US\$8,000 inherited from her father, all for the purpose of contributing to the acquisition, and later, the maintenance of the properties of that piece of land.

29. Straightaway, I will state that the plaintiff failed to adduce any evidence that the defendant made any fraudulent misrepresentations about co-ownership of the houses on Lot 10303/17 with her, nor did she adduce sufficient credible evidence that she had placed any significant sums of money into the acquisition of the land, or the construction of the houses, in alleged reliance on same.

30. On the contrary, the only credible evidence led by the plaintiff of her involvement in the acquisition of the properties, relates to the co-signing of the 1985 Bank of Nova Scotia loan, part of which was used to acquire the freehold title to the land on which the houses stood in 1985, and the assignment of her salary for its repayment. Despite her pleading of handing over her salary, pooling her life's earnings and using whatever means she had including inheritance money as her contribution to the construction of the houses, she led no evidence of actual financial contribution. Her attempt to establish that before the smaller rental house was built, she was part of a loan transaction, which evidence was led to establish her involvement in the acquisition right from the beginning of the construction of even the smaller house, fell flat when (as will be demonstrated in due course), the document she sought to rely on, could not support her assertion by reason of its inconsistency.

31. Regarding the substantial financial contribution she alleged, the evidence led by the plaintiff painted a picture quite different from her pleading. In this

regard, it is noteworthy that in giving evidence in proof of the matters asserted in pleading, the plaintiff abandoned this claim of using her own finances, in favour of a case based on her participation in the securing of bank loans which she said were contracted jointly by the couple, twice: in 1981 and in 1985, for the purchase and construction of the properties. This left no place for the alleged use of her personal finances or an inheritance, as pleaded. On the contrary, the evidence revealed that in 1977 when she commenced a relationship with the defendant, she had in fact been unemployed and had secured employment through the help of the defendant, then manager of a radio station. Both houses were built and habitable, when in 1985, she co-signed a loan from the Bank of Nova Scotia which was used to purchase the freehold title (on her own showing, the smaller house on Lot 10303/17 was completed in 1982 and was rented out, and that in 1984, the parties went to live in the bigger house which had three bedrooms completed and a temporary roof). Before the purchase of the freehold title to Lot 10303/17 on which two houses had been built, it was held by the defendant upon a lease. The loan account with the Bank of Nova Scotia was serviced by rental income from the smaller house, and paid by the defendant from his bank account which had become the loan account. Payments were made by the defendant from 1985 until February 1994, when the defendant who had left for Providenciales, neglected to make payments. In February 1994, due to the non-payment of mortgage loan instalments, the Bank took its first payment from the plaintiff's salary which had been assigned in 1985, nine years earlier. Following the Bank's accessing of its loan payment from the plaintiff's assigned salary, the plaintiff immediately arranged to have the rental money which should have gone into the defendant's loan account, diverted into her savings account, and thereafter, made payments from the savings account. The rents received, was never below US\$1100 per month although the bank's monthly payments was in the sum of about US\$514-\$530. Although the plaintiff insisted that the smaller rented house was not always rented (and therefore that there was not always rental income from which to meet mortgage payments), she failed to provide any accounting of rents received over the entire period.

32. In the plaintiff's affidavit sworn in support of her divorce, she deposed, giving contrary evidence, that her sole income had been the said rental income, for in January 1999, save for a six-month period when she worked with Cable & Wireless as a contract officer, she had been unemployed. She further deposed that she had received a severance package from her employers: the sum of

\$19,742.31 which she used to purchase a 1999 Hyundai Electra for approximately \$18,000.00 and a moped for her mother for \$1,000.00.

33. It is manifest that the contribution alleged in the pleading of the plaintiff regarding the use of her own "life's earnings" in the acquisition of the properties, was not substantiated by any credible evidence. The other expenditure she claimed to have made: helping the defendant with his bills in Providenciales and co-signing a loan for a car purchase for the defendant at Providenciales, which was denied by the defendant, was also not supported by any corroborative evidence, documentary or otherwise.
34. Regarding the alleged express representations, no evidence of an oral representation that allegedly constituted such inducement to get the plaintiff to part with her own monies was adduced. Indeed when her evidence was tested by cross-examination, she prevaricated on whether or not the defendant had ever made her such promise, or that there had even been any discussion on the joint ownership of the properties, between them.
35. Documentary evidence was however adduced by the plaintiff in a bid to demonstrate that the defendant had made a statement in writing from which an inference - that the properties on Lot 10303/17 were to be jointly held, was to be made. The said document which was marked 'K', was however of very little probative value for the following reasons: it was of doubtful authorship, its custody was not authenticated, and it was undated. It however bore the names of both plaintiff and defendant, and purportedly bore their signatures.
36. While document K was tendered as a document from a Bank, it did not have the heading such as would identify the Bank. A notation on the bottom thereof however read that it was made by the undersigned: "for the purpose of procuring credit from Barclays Bank International". The content of the document included an entry that an amount of US\$13,800 was already owed to Barclays Bank International. There was also requested information on the document regarding loans, mortgage or otherwise owed by the undersigned which was not provided. Blank also were the columns under which information on the assets of the persons including furniture, cars, appeared. The balance under the assets was tampered with, having been partially wiped out.

37. The following declaration was made on the said document, allegedly by the undersigned:

*“One completed house on Grant Turk Lot 103107/17. This house is rented for \$450 per month. The house is insured for \$50,000. One house currently under construction also on Grand Turk. One completed house on Providenciales on Lot # 60501/45. This house is valued at \$30,000. It is currently rented for \$200 per month. We also hold freehold title for Lot # 60501/56 on Providenciales. This is valued at \$12,000. We are also shareholders in the Grand Plantation which comprises of over 50 acres of land”*

38. It is to be noted that in the last two lines of the said declaration, the plural pronoun “we” was used. This is the documentary evidence relied on by the plaintiff to make the case that before the properties were acquired, the defendant had indicated that they would be jointly owned, and that the plaintiff placed reliance on this representation, to put into the property large sums of her own money to acquire and maintain the property.

39. The problem with the documentary evidence tendered is first, the intrinsic quality of the document. The document, if nothing else, is anachronistic. This is because it was offered to establish a common intent of joint ownership at the point of acquisition of the properties. In this regard, the plaintiff alleged that the parties secured a loan for the construction of the houses on the land: Lot 10303/17 in 1981. It was her evidence that the land was vacant at the time the couple got married in 1979, and that they secured a loan jointly in 1981, to put up the houses. She alleges that in 1982, the smaller house was completed and further alleges rather incongruously, that in 1984, the parties once again secured a loan, to complete both houses, a matter that was set out in a letter dated 12<sup>th</sup> November 1984, which she tendered in proof of her allegation.

40. It is manifest then, that the representation which the document was tendered to evidence, could only have been made after 1982 for there was reference therein to a completed house given for rent. It could not then have been in respect of a loan transaction entered into in 1981 which is the first loan alleged by the plaintiff which the defendant denies.

41. Nor could it be in respect of the 1985 loan which the plaintiff co-signed and in respect of which she assigned her salary, being the main contribution she relies on in respect of the acquisition of the land and the construction of the

houses. This is because the 1985 loan was secured from The Bank of Nova Scotia, and not from Barclays Bank International, to which the document purported to belong. There is ample evidence corroborating the defendant's version that the loan transaction in 1985 was with Bank of Nova Scotia. The evidence includes the document by which the plaintiff assigned her wages to the Bank of Nova Scotia on 25<sup>th</sup> November 1985, as well as a letter from the said bank in 2002, commending the plaintiff for her prompt repayments of the loan from February 1994 until 2002.

42. Because it was unclear what document it was, the plaintiff, forced to identify same, alleged during cross-examination, that the document was filled out for the purpose of sending same to a bank but that it was not sent due to errors in it. A copy thereof, she claimed was sent to the bank, although she failed to indicate for what and when it was made.
43. Regarding the content of the document: an amount of \$13,800 was said to be owed by the persons whose account it purported to be. If the document was as stated therein: part of documentation to secure a loan, and if that was the alleged 1981 loan, it leaves the question regarding when the loan facility of US\$13,800 received.
44. But apart from these stark facts, the incongruity of the evidence is not lost on the court: in this document, there is mention of two properties: one completed house rented out at USD\$200, and one piece of freehold land in Providenciales. There is no evidence that before 1993 when the defendant left to seek employment at Providenciales, the parties, or even the defendant had constructed a dwelling house on the island of Providenciales. On the contrary, on the evidence, in 1993 when the defendant relocated to that island, he had no place of abode in Providenciales and had to live with his sister before acquiring property, a dwelling house.
45. Such a state of affairs would be inconsistent with the declaration (in 1981 or 1985), on the document which made reference to properties owned by the declarants in Providenciales.
46. Moreover, the plaintiff has never claimed any interest in the Grand Plantation. On the contrary the plaintiff acknowledges that the ownership of land within the Grand Plantation is vested in the defendant and his siblings, and not the defendant and the plaintiff or even the defendant alone.

47. The said document therefore raises more questions than it provides answers for reasons set out, as it failed when subjected to scrutiny, to demonstrate that the defendant had in fact made the assertions therein contained, from which an intention to own the properties jointly with the plaintiff was indicated at the point of their acquisition.
48. Thus, the document's probative value, as evidence of the defendant's expressed intention of co-ownership, by the use of the pronoun "we" was next to nothing, as the document itself was of doubtful authenticity, and certainly could not be evidence of common intent at the point of acquisition.
49. To further establish involvement in the construction of the two houses, the plaintiff tendered document 'D', a letter from Barclays Bank International, which was dated 12th November 1984. The issue with the said document as evidence of construction involvement, in that it made reference to a loan offered to the couple to "assist with the construction of both...houses", is that in 1984, on the plaintiff's own showing, not only was the rental house completed and rented two years before, but the couple lived in the partially completed bigger house.
50. Incongruously also, the loan was alleged to be also secured by rental monies, a suggestion that rental property was in existence which would make the description of the loan as one accessed to "assist with construction of both...houses", irreconcilable with the true state of affairs. Other inconsistencies include the fact that the loan alleged in there was alleged to be secured inter alia by title to the land 10307/17/, although its 1984 date predated the acquisition of that parcel of land's freehold title in 25th November 1985. Moreover, there is no indication on the Register of Lands, that the land was ever used as security for a loan.
51. The letter of 12<sup>th</sup> November 1984 also made reference to a personal loan taken by the defendant to meet the medical bills of the plaintiff and her mother. The defendant averred that the document D was forged, as he denied taking a loan in 1984, and challenged that it was unreasonable to expect that if he had taken a loan in November 1984 he would not have needed another loan in 1985. He asserted that he had taken a loan from Barclays Bank International in 1978 and used it to complete the rental property in that year.

52. Having regard to the inconsistencies in the document D, it seems to me that the quality of the said document as evidence of a loan acquired by the parties jointly to construct the properties, is unsatisfactory.

53. Furthermore, regarding the monies used for the maintenance of the properties, beyond the plaintiff's admission during cross-examination that she had in fact diverted the rental income from the defendant's account into hers in order to pay the outstanding loan, the plaintiff also, in her affidavit filed in support of the earlier divorce proceedings which she tendered as part of her present case, had this to say about her finances (this is apart from her admission that she used her severance pay for a motor car and moped for her mother):

*"17. From February of 1994 until April of 1995 the house was not rented and I paid the mortgage and maintained myself from my salary. In May of 1995 the property was rented for 1,100.00 per month. We were without a tenant for several months in 1997 before the house was again rented for 1,300.00 per month. This second tenancy ended in July of 1999 and the house was next rented in October of 1999 for a period of six months. In May of 2000 the house was rented at \$1,500.00 per month. That tenancy continues. When the house is rented, the rental monies are deposited to my account and are used to pay the mortgages and to meet the expenses associated with the property.*

*26. My only source of income is the rent from the property, currently \$1,500.00 per month. At my age and given the current economic climate in Grand Turk I believe that it is unlikely that I will be able to find employment easily and in all probability I will have to rely on the income from the rental property for my maintenance and the continued maintenance of the properties.* (my emphases)

54. The plaintiff's case is anchored on an alleged fraud/ deceit of the defendant for his failure to place the plaintiff's name on the title to the properties on Lot 10307/17 after she had allegedly relied on his representations regarding joint ownership, to expend her own monies for the acquisition and the maintenance of the properties. She has in fact asked for damages for fraud and deceit in this action.

55. Despite a number of offshoots, the case of *Derry v Peek [1889] LR 14 App Cas 337* remains the *locus classicus* for fraudulent misstatements in contract,

and the tort of deceit. At p. 374, Lord Herschell said, *'In order to sustain an action for deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is shown that a false representation has been made: 1) Knowingly, 2) Without belief in its truth, or 3) Recklessly, careless whether it be true or false..'*

56. As aforesaid, the plaintiff's evidence that the defendant had made an oral representation of an intent to co-own the properties with her is shaky at best, as she acknowledged while under cross-examination that there had been no such discussion between them. The documentary evidence has been found to have no intrinsic worth, as it appears to be contrived (rather inexpertly), to make a case for the plaintiff. It could therefore not form the basis of a finding of fact of such intention, for no credible evidence was led by the plaintiff to demonstrate what she pleaded in emphatic terms, that placing his name on the title of the property which he had leased as sole owner, and later bought, was fraudulent or deceitful of the defendant. There is no credible evidence that the defendant made any representation (oral or written) to the plaintiff, of an intent to own the properties jointly with her, and that the said representation was made "knowingly, without belief in its truth, or recklessly, careless whether it be true or false, or furthermore, that the plaintiff, as pleaded, relied on it by expending large sums of her own money, including her "life's earnings" to acquire and maintain the properties.

### **Constructive Trust**

57. This is however not to say that the plaintiff has failed to make a case regarding an interest in the properties on Lot 10307/17 which land is held by the defendant as the legal owner.

58. The plaintiff alleges that both houses on the property were constructed after they were married. For this she has tendered the now discredited letter dated 12 November 1984 from Barclays Bank International evidencing a loan facility granted to both parties, in which it was stated that the loan was to assist the parties with the construction of both houses. The defendant denies knowledge of this transaction. As aforesaid, the plaintiff who tendered it to, among other things, demonstrate that she was co-signatory to the loan used for the construction of the both houses, has herself given contrary evidence in which she states emphatically that the smaller house was finished in 1982 and rented out. On her own showing also, in 1984, she lived in the matrimonial home which had a temporary roof with three rooms completed. Thus the

documentary evidence tendered by the plaintiff contradicts her assertion that she was signatory to the loan used to construct the rental property.

59. It seems to me then that the plaintiff has failed to adduce evidence to establish that the smaller house on the property Lot 10307/17 was put up by the parties after they were married in 1979.

60. The defendant's case is that the properties on Lot 10303/17 was put up by him, and that the smaller one was completed in 1978 with a loan accessed solely by him in that year from Barclays Bank International. He alleged that upon completion in 1978, he rented out, before the parties got married in 1979. At that time, according to the defendant, the bigger house which became the matrimonial home was uncompleted. I have examined the evidence led by the opposing parties, and also have regard to the demeanour of the parties as they gave evidence (albeit on screen and not in person), and I am persuaded that the defendant was a more reliable witness than the plaintiff. I say this even though a contrary finding was made by Ground CJ in the divorce petition to which I have been referred. In the present suit, the plaintiff has been anything but a witness worthy of credit. The inaccurate narrative of her contribution by way of personal earnings, which was found to contain inconsistencies and was largely discredited during cross-examination, leads me to draw my own inferences regarding the credibility of the parties, and to arrive at the conclusion that the plaintiff was not altogether a witness of truth, upon whose evidence much credit must be placed.

61. Yet the claim of the plaintiff to some interest in the property is not defeated because of the unreliable evidence by which she contrived to make the case that she had been deceived into believing that she would co-own the property, and had, relying on representations, altered her position to her detriment.

62. It is now settled law, that in determining property relations between husband and wife, the law of trusts is the applicable body of law, and in particular, constructive trust in circumstances in which a partner contributes to the acquisition of property directly or indirectly upon a belief that he/she would own a beneficial interest the property. A constructive trust is imposed for the reason that it would be inequitable for the party who accepted the contribution but is the legal owner of the property, to keep it all, see: *Gissing v Gissing*

*[1970] 2 All ER 780 HL*; also, *Grant v Edwards and another [1986] 2 All ER 426*

63. In *Abbott v. Abbott, Privy Council Appeal No 142 of 2005*, Their Lordships recounted the developing law on marital contribution to property rights, and expounded that in such cases, a constructive trust may arise in favour of a contributing partner even in the absence of an agreement or arrangement between the parties for the party who is not the legal owner of property acquire a beneficial interest in the property. In commenting on the quality of evidence requisite to establish such interest, they differed from the now oft-quoted dictum of Lord Bridge of Harwich in *Lloyd's Bank plc v. Rosset [1991] AC 107 at 132-3* in which he asserted that that in the absence of an agreement or an arrangement to share, even if that would have been the reasonable thing to do given the circumstances, nothing short of “direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust”, will do, where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially, and as the conduct relied on to give rise to a constructive trust.

64. I will also place reliance on dicta of the eminent judges rehearsed in the said judgment, to assert that a constructive trust may arise from a presumed common intention for the contributing party to have beneficial interest, evidenced by the conduct of the parties. I reproduce entire portions of the judgment in this regard; “5. Lord Walker also commented upon the passages from the speech of Lord Bridge of Harwich in *Lloyd's Bank plc v Rosset [1991] 1 AC 107* quoted in para 3 above. Lord Walker pointed out, at para 25, that although Lord Bridge had drawn a sharp contrast between cases in which there had been some prior agreement to share and those where there had not, he and all the other members of the House were “unanimously, if unostentatiously, agreeing that a ‘common intention’ trust could be inferred even when there was no evidence of an actual agreement”. Lord Walker went on to comment, in para 26:

*“Lord Bridge's extreme doubt ‘whether anything less will do’ was certainly consistent with many first-instance and Court of Appeal decisions, but I respectfully doubt whether it took full account of the views (conflicting though they were) expressed in *Gissing v Gissing* (see especially Lord Reid [1971]*

*AC 886 at pp 896G-897B and Lord Diplock at p 909D-H). It has attracted some trenchant criticism from scholars as potentially productive of injustice (see Gray & Gray, Elements of Land Law, 4th ed [(2005)], paras 10.132 to 10.137, the last paragraph being headed 'A More Optimistic Future'). Whether or not Lord Bridge's observation was justified in 1990, in my opinion the law has moved on, and your Lordships should move it a little more in the same direction . . ."*

65. While the plaintiff's case that the defendant had made false representations, calculated to induce her to make contributions from her own resources to the acquisition and maintenance of the properties, the conduct of the parties appear to make a case for the plaintiff.
66. In this regard, I give consideration to the documentary evidence of the plaintiff, that as part of the loan transaction of 1985, the defendant assigned her salary for its repayment. It is the evidence of the defendant that such was a mere formality, made requisite because of his marital status at the time of contracting the loan. He asserts that the assignment notwithstanding, no money was taken from the plaintiff's salary.
67. But in spite of the defendant's protestations, an assignment of a salary in a loan transaction is just what it purports to be: security for the repayment of the loan. It therefore matters not that in the instant case, the salary of the plaintiff was untouched by the Bank for nine years: from 1985 until February 1994.
68. That the plaintiff's salary remained assigned meant that whenever there was a lapse in the repayment schedule, the Bank would have something to hold, which is what they did in 1994, and there is no evidence that the defendant made any attempt to reimburse the plaintiff for the loss of income.
69. From the evidence, it is doubtful if the assignment of salary notwithstanding, the plaintiff ever had a real intention to use her own money for such repayment, for, the evidence is that as soon as the bank started taking her own money in February 1994 (following the defendant's departure for Providenciales), she diverted monies received for the rental of the smaller house, from the loan account kept by the defendant at the Bank of Nova

Scotia, into her own savings account and used same to meet the loan instalment repayments.

70. In spite of these matters, the fact remains that the assignment of the plaintiff's salary was indicative of her willingness to undertake the repayment of the loan, at the time it was contracted, and that the defendant allowed her to make such commitment which would have meant a loss of her income, was indicative of his acceptance that she had a share in whatever the loan was used to acquire.
71. In spite of the defendant's assertion that the loan of 1985 was not used to build the houses on Lot 10307/17, as the smaller house was completed and used as rental property in 1978, and that the parties actually lived in the bigger house as their matrimonial home, from 1984, he admitted that part of the loan was used to purchase title to the freehold.
72. Thus, while I have not found any cogent evidence of fraudulent misrepresentation, or deceit in the conduct of the defendant when he purchased the title to the freehold in his sole name, this singular fact: that the loan which was used to acquire title to the freehold, was secured by the salary of the plaintiff, would operate to give her an interest in the properties attached to the land even if she had not contributed anything to their construction, if for nothing else, on this principle of considerable antiquity, expressed in Latin as: *quicquid plantatur solo solo cedit*, see: ***Minshall v Lloyd (1837) 2 M&W 450***.
73. I find then that the plaintiff's assignment of her salary for a loan she co-signed which was used to purchase the title to the freehold gave her an interest in that land on which stood two houses, whether or not she contributed her own finances towards their construction.
74. On the showing of the plaintiff, she held a belief that she possessed an interest in the properties on Lot 10303/17 because the freehold title had been acquired with a loan she had co-signed and in respect of which she provided security. This belief she said, motivated her to make in kind contributions to the maintenance of the properties over two decades.

75. Having regard to all the circumstances, this belief was not, in my view, unreasonable. I also find that even if the defendant had never had the intention to share ownership with the plaintiff and so had made no such communication, his conduct in relation to the properties after he left for Providenciales, in 1993, until their divorce in 2002 fed the plaintiff's belief.
76. The uncontroverted fact is that from 1984 until 1993, while the parties cohabited in their matrimonial home, the defendant used rental income from the smaller house on the land, to make the loan instalment payments to the Bank of Nova Scotia. Although at the point of his departure to Providenciales, the defendant had a small bank balance of US\$3.88, the evidence is that he had set in motion, a mechanism for ensuring that there would be money to repay the loan: the use of rental income from the smaller house.
77. Even so, the bank had found it needful to fall on the salary assigned by the plaintiff in 1985 when the loan was granted.
78. It seems to me that this was so because it was not enough to simply generate funds targeted for loan repayment; someone had to be responsible for making the periodic payments, if the payments were not to lapse and the property become liable to forfeiture. On the evidence, from the time the defendant left the matrimonial home in 1993 for Providenciales, he abdicated all his responsibilities towards the maintenance of the houses in favour of the plaintiff, and this continued when their relationship soured, and went downhill.
79. But maintaining the properties went beyond routine fixes. These houses are on land close to the beach and was sometimes at the mercy of the elements. On two occasions, there were hurricanes which caused damage to the buildings. Even in such abnormal times, the defendant remained aloof, and removed from any responsibility to bring the houses into a state of tenantable repair.
80. For over two decades, the defendant behaved like it was the duty of the plaintiff, since she was in residence, to use what rental income she received to pay the mortgage, insure the property, keep it in repair and fix damage to it occasioned by hurricanes.

81. That the defendant insists that the insurance he had set up for the property should have been continued by the plaintiff is indicative of the fact that he was so removed from any matters of maintenance of the houses, that he would not even, when the properties were in peril by an act of God, bring himself to show some interest in how the properties would be managed, with or without insurance.
82. Although the plaintiff averred that in these times, there was not enough money to undertake repairs, and that she accessed loans from family members, the defendant maintained that it was rental income that the plaintiff used to repair the houses. There is no evidence that he ever made enquiry regarding the state of the houses. On the contrary, when the plaintiff through her lawyer reached out to him to support an application for European Union Funds, he refused to respond to the request and continued to remain detached from everything that needed to be done to put the two houses in repair.
83. There is no denying that he did not live on the property and had not done so from 1993 (although he had before 2002, visited the property from time to time, as Ground CJ found in his judgment). I also bear in mind that in 2002, the court had asked him to exercise restraint in his visits to the property. In my judgment however, the court's caution did not advise a total removal from matters connected with the maintenance of the properties.
84. In my judgment, the defendant's conduct demonstrated either a total abdication of responsibility for maintenance of the properties over two decades through even hurricanes - and he cannot be made to benefit from the plaintiff's substantial work to keep the properties in repair - or that he recognised that the plaintiff who had co-signed the 1985 loan used for acquiring the freehold title and had assigned her salary, was co-owner with equal responsibility to maintain, and he cannot now be heard to say the contrary.
85. The plaintiff who lived in the house assumed responsibility, according to her, not as agent of necessity for the defendant, but as one with an interest to protect, to maintain the houses. The defendant asked for no accounting, and the plaintiff gave none, and even as she prosecuted her claim in this court, failed to give an accurate picture of just how much money she had collected as rent over the years. But that she was in complete charge of the properties

cannot be gainsaid, and that included decisions on how the rental income was to be used.

86. Even in the face of my finding that the monies used by the plaintiff for the works on the buildings were more probably than not, rental income, and not her personal resources, it would seem that the plaintiff who assigned her salary and co-signed the 1985 loan which was used to purchase the freehold, held onto the properties and did everything in the belief that she held an interest in the properties, and made sure that they would be in tenantable repair in order to receive rental income from the smaller house, and to put a roof over her head in her post-retirement years. She gave extensive evidence of work she had done on the house over the years, including replacing half of the roof after a hurricane, making arrangements for a sea defence wall (which the defendant declared to be unnecessary).
87. The defendant at all material times appeared to accept the plaintiff's work on the houses. Indeed, as he gave evidence, it was manifest that he expected her to play her part by putting in energy and supervision. Some examples of these include his statement that "she was given rental money to take care of the houses". He also expressed disgust that she did not continue to make payments towards insurance premiums with Lloyds of London which he had put in place before 1993; this was to say that he fully expected the plaintiff to undertake the insurance of the house. In 2008 and 2019 when hurricanes devastated Grand Turk and affected the house, the defendant on his own showing, showed little interest in getting the house fixed, in fact, he refused to support the plaintiff's application for aid to restore the houses after the hurricanes.
88. To explain his conduct, he stated that the rental money was available for that. At all times, the defendant behaved as if money alone could get things done, when it was clear that the kind of maintenance that had been done over the years had to have had a person dedicated to ensuring that the properties would be maintained.
89. At the very least, he acquiesced in the role the plaintiff assumed of active manager/caretaker of the properties. But more than that, as aforesaid, the defendant's acceptance of the service of the plaintiff regarding the maintenance of the houses, was indicative of his recognition that she had an

interest in the property to protect, as he was aware of her involvement in the 1985 loan he used to purchase the title to the freehold.

90. I have endeavoured to paint a picture which hopefully conveys the conduct of the defendant, that knowing the antecedent matters of the 1985 loan and the plaintiff's involvement, he must have been aware that the plaintiff held the belief that she held an interest in the properties, even if the properties remained in his sole name and he had made no express promises to the plaintiff.

91. Allowing the plaintiff to expend energies and her life as it were, for two decades taking care of the properties, it will be inequitable to permit the defendant to take the whole of it simply because he holds the legal title. This is especially so as the plaintiff's involvement in the 1985 loan coupled with the maintenance over two decades, must be held to be substantial contribution to the properties in their present state of repair.

92. It is for this reason that a constructive trust must arise in favour of the plaintiff whose expressed motivation for co-signing the loan used to acquire the freehold, assigning her salary as security for repayment, continuing with the mortgage payments, maintaining and repairing the houses through two hurricanes was grounded on the belief, that she had acquired an interest in the properties to preserve, see: ***Gissing v Gissing [1970] 2 All ER 780.***

93. I have regard to the arguments made on behalf of the defendant regarding the law which on the authorities requires, even where an agreement for beneficial ownership is established between the parties, for it to be at the point of acquisition, see: *Rosset's case*, and that the court must be slow to infer an intent for beneficial ownership by the contributing party post acquisition. I however hold that in this circumstance, the involvement of the plaintiff in 1985 (being a co-signatory of the loan, and assignor of her salary for repayment), would bring the circumstances of this case within one in which an inference of common intent may be made at the point of acquisition of the freehold title to the land in November 1985. The inference is made even stronger having regard to the conduct of the parties and the full control and maintenance of the properties by the plaintiff for two decades.

94. I therefore find as a fact that although there may have been no expressed intent by the defendant that the plaintiff would hold a beneficial interest in the

buildings on Lot 10307/17, the significant contribution of the plaintiff, made in the belief that she was providing security for the loan for purchasing the freehold title, preserving that which was her own through routine maintenance and repairs after hurricanes, which contribution was accepted by the defendant as an entitlement, placed the defendant who held the legal title in the properties, in the position of a trustee. This was to the extent of the plaintiff's contribution which placed her in the position of a cestui que trust to the extent of her substantial contribution to the estate, to provide a beneficial interest for her in the properties on Lot 10307/17.

### **Portion of Contribution and Entitlement**

95. By reason of the evidence led in this case which deals with marital contributions to property acquired in a period that includes the period of marriage, it is unfortunate that this dispute was not determined in the divorce, for the court had the power to do this, under S. 28 and 29 of the *Matrimonial Causes Ordinance Cap 11.04*. Having held the plaintiff entitled to a beneficial interest in the two properties on Lot 10307/17, I go ahead to discuss the portion that should rightly be held to belong to her.

96. It is important to point out that the properties on Lot 10307/17, even if commenced before the marriage of the parties in 1979 (as the defendant alleges), that the freehold title to the land on which the houses stand, was purchased in 1985, six years into the marriage. That would make them property acquired during the marriage.

97. In my research, what stood out for me was the application of the "equality is equity" maxim of equity in a number of cases.

98. What was the contribution of the parties to the properties on Lot 10307/17? Going by their own evidence, the first transaction relating to the land was done by the defendant for he secured a lease from the government in 1977. According to the defendant, he constructed both buildings to belt course and then raised a loan in 1978 to complete the smaller house which he rented out. In 1984, he completed three rooms and put a temporary roof over the matrimonial home. In 1985, he raised a loan part of which was used to purchase the freehold. He added to the house by constructing a porch and utility room. Throughout this time, he used the rental income from the smaller house to repay the 1985 loan until 1993 when he left for Providenciales.

99. The evidence of the plaintiff which remains uncontroverted, was that she co-signed the 1985 loan and assigned her salary for its repayment. That was the money used in the purchase of the title to the freehold. In February 1994, when the defendant had left for Providenciales and fell behind in payments such that a notice was sent for repossession, she assumed making mortgage payments with rental income. She finished making the payments in 2002. She also paid some insurance on the properties, but discontinued payments for some time and then could not get insurance. She maintained both houses from 1994 to date, which maintenance included making repairs to house through the damage caused by two hurricanes. Indeed, over and over again, she insisted that she it was who had kept the houses in maintained, and when struck by exigent circumstances of two hurricanes, repaired them to make them habitable.

100. In line with the authorities, in such a case in which the contributing spouses/partner's beneficial interest is up for assessment, the duty of the court is to have regard to all the circumstances, including "the course of dealing between the parties relevant to their ownership and occupation of the property, and their sharing of its burdens and advantages. That scrutiny will not confine itself to the limited range of acts of direct contribution of the sort that is needed to found a beneficial interest in the first place. It will take into consideration all conduct which throws light on the question of what shares were intended". *Midland Bank v Cooke [1995] 2 FLR 995 CA*. The present case appears to be on all fours with Midland Bank's case in which the contributing wife was held entitled to fifty percent (50%) of the matrimonial property.

101. In the circumstances of this case, I am inclined to assess the plaintiff's share in similar terms as on the evidence, the plaintiff by her contribution regarding acquisition and maintenance, has earned the right to one-half of the properties on Lot 10303/17.

102. Fortunately, there are two buildings on the land, one of which the plaintiff has kept in such a state of repair that it continues to yield income. Because there are two buildings, I see no reason why the properties must be sold for the proceeds to be shared between the parties.

103. Because the plaintiff has lived in the former matrimonial home and maintained it for herself and her mother, it seems to me that it will be more

equitable, given the years of care she has bestowed upon it, for judgment to be entered for her to keep the matrimonial house which is the bigger property on the land, absolutely.

104. The smaller house has been used as rental property. From the judgment of Ground CJ in the prior (divorce) proceedings, the defendant always wanted a liquidation of that property, so he would have access to the money. His interest in the property it would seem was in its ability to yield income. It having been kept in such repair as to yield rental income, it seems to me that equity will dictate that the defendant who holds the legal title, be made to keep the smaller house, absolutely.

105. An order is in consequence made for the defendant to take steps to have the land: Lot 10303/17, partitioned, and to convey the title to the part on which the matrimonial home stands, to the plaintiff.

106. As aforesaid, the plaintiff has not made out an entitlement to the damages for fraud, misrepresentation and/or deceit that she seeks.

107. Having heard counsel on both sides, and having considered the facts of this case, the conduct of it, and the outcome, I make an order for the parties to bear their own costs.



Sgd.  
M.M. AGYEMANG  
CHIEF JUSTICE